

BETWEEN MALCOLM EDWARD RABSON  
Applicant

AND WAYNE SEYMOUR CHAPMAN  
Respondent

Counsel: Applicant in person  
S A Barker for the Respondent

Date of Minute: 8 July 2014

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**MINUTE OF GLAZEBROOK J**

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[1] Mr Rabson seeks leave to appeal against a decision of the Court of Appeal striking out his appeal against a decision of Kos J.<sup>1</sup> His main objection appears to be the costs order made against him by the Court of Appeal.

[2] One of Mr Rabson's arguments is that an order striking out the appeal could not be made because his appeal had already been deemed abandoned under r 43 of the Court of Appeal (Civil) Rules 2005. He had not applied for a hearing date or filed the Case on Appeal within the time frame set out in r 43(1).<sup>2</sup> In addition, the three month period, under r 43(3), for applying for an extension of time had passed. There was therefore no appeal to strike out.

[3] It may be that the Court of Appeal overlooked the fact that the appeal had already been deemed abandoned. In the circumstances, the better course appears to be for Mr Rabson to apply for a recall of the Court of Appeal's judgment.

[4] In the meantime, his application for leave to appeal is adjourned.

Solicitors:  
Buddle Findlay, Wellington for the Respondent

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<sup>1</sup> *Rabson v Chapman* [2014] NZCA 158.

<sup>2</sup> He was unable to do so because he had not paid security for costs: r 37(2).