IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2020-404-2143
[2020] NZHC 3072

UNDER	The Judicial Review Procedure Act 2016, s 27(2) of the New Zealand Bill of Rights Act 1990, and Mafart & Prieur v Television New Zealand [2006] 3 NZLR 18.
BETWEEN	VINCENT ROSS SIEMER Applicant
AND	AUCKLAND HIGH COURT First Respondent
	MATTHEW GEOFFREY PALMER Second Respondent

On the papers: At Auckland

Judgment: 20 November 2020

JUDGMENT OF POWELL J

This judgment was delivered by me on 20 November 2020 at 3.30 pm pursuant to R 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Copy to:
Applicant

[1] Vincent Ross Siemer has filed proceedings in this Court purporting to be an "application for mandamus" against both this Court and Palmer J, and has requested that it be removed directly to the Court of Appeal.

[2] The Registry has queried whether the proceeding should be accepted for filing, and, in particular, have queried whether Mr Siemer is currently a vexatious litigant.

[3] On this preliminary point I note there are conflicting decisions in this Court as to whether or not Mr Siemer remains a vexatious litigant.[1] As that matter is currently before the Court of Appeal,[2] whether or not this application is an abuse of process must be considered on its own right.

[4] A close look at the primary document filed by Mr Siemer shows that he is apparently aggrieved by the fact that Palmer J, in a judgment dated 25 November 2019,[3] having concluded Mr Siemer was not currently a vexatious litigant,[4] raised the question as to whether Mr Siemer should be so categorised pursuant to s 166 of the Senior Courts Act 2016.[5]

[5] As a result, Palmer J called for submissions on the issue from both the Attorney-General and Mr Siemer, to which Mr Siemer responded but the Attorney- General did not. At that point Palmer J concluded in his Minute No 4. that there was an insufficient basis to make any orders pursuant to s 166. Mr Siemer then appealed Minute No 4. to the Court of Appeal, but that Court concluded no decision had been made by Palmer J and as a result there was no proper basis for any appeal.[6] In particular the Court noted:[7]

> We do not accept that the observations of Palmer J either in his 25 November 2019 judgment (which is not the subject of appeal) or in his subsequent minute of 28 February 2020 constitute a judgment, decree or order. The very point of

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1 See *Siemer v New Zealand Law Society* [2019] NZHC 3075 at [28] and *Siemer v Auckland High Court* [2019] NZHC 3393 at [11].
2 See *Re Siemer* [2020] NZCA 393 at [8] and footnote 4 where the Court of Appeal notes that leave to appeal the decision of Downs J in *Siemer v Auckland High Court* [2019] NZHC 3393 was granted.
3 *Siemer v New Zealand Law Society* [2019] NZHC 3075.
4 At [28].
5 At [29].
6 *Re Siemer* [2020] NZCA 393 at [28].
7 At [26].

> the minute was to record that Palmer J was not making, and did not intend at that time to make, an order under s 166. Mr Siemer's complaint about the process which was followed in reaching that point does not provide the basis for an appeal to this Court.

[6] Following the failure of his appeal Mr Siemer attempted to get Palmer J to recall Minute No 4. In his Minute No 5. Palmer J noted the effect of the decision of the Court of Appeal before addressing Mr Siemer's substantive application for recall in the following terms:[8]

> Mr Siemer now asks that I respond to his application for recall of 3 March 2020. In summary, he submitted in his memorandum:
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> (a) The declaration of a preliminary view in the judgment was an abuse.
>
> (b) The intituling was misleading.
>
> (c) Minute No 4 could be argued to adjourn the matter and should be a judgment.
>
> I do not consider any of those grounds justify recall of Minute No 4. The preliminary view expressed in the judgment about the proceeding Mr Siemer wished to file was just that: preliminary. I offered Mr Siemer and the Attorney-General the opportunity to provide submissions on that question. Mr Siemer took up the opportunity. The Attorney-General did not. Minute No 4 reported my conclusion that there was an "insufficient basis on which I would be justified in making orders under s 166". This was not an abuse of anything. As the Court of Appeal held, the process respected the obligation to observe natural justice and there was no unfairness to Mr Siemer, who benefitted from the result. That process is at an end. I do not consider it can be interpreted to be adjourned.
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> (footnotes omitted).

Discussion

[7] Having set out the background it is clear the substantive matters purported to be raised by Mr Siemer in the present proceedings have already been addressed by the Court of Appeal, and that the subsequent dismissal of Mr Siemer's application for recall by Palmer J was an inevitable result of the conclusions reached by the Court of Appeal. As a result, the present application brought by Mr Siemer, claiming as it does procedural impropriety and/or breach of natural justice on the part of Palmer J in raising the issue of whether an order pursuant to s 166 of the Senior Courts Act should

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[8] Noting that Mr Siemer also raised issues about intituling which were dismissed by both the Court of Appeal and Palmer J.

be made against Mr Siemer and/or "failing" to issue a judgment, is clearly nothing more than an attempted collateral attack on the decision of the Court of Appeal. As such I am satisfied that Mr Siemer's present application is a clear abuse of the process of this Court, both in terms of the Court's inherent jurisdiction and/or in terms of r 5.35B of the High Court Rules 2016. The proceedings are therefore struck out. Pursuant to r 5.35B(3) Mr Siemer is entitled to appeal this decision.

Powell J