

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA156/2015
[2015] NZCA 543**

BETWEEN MALCOLM EDWARD RABSON AND
RICHARD JOHN CRESER
Appellants

AND TRANSPARENCY INTERNATIONAL
NEW ZEALAND INCORPORATED
Respondent

Hearing: 9 November 2015
Court: Wild, Miller and Cooper JJ
Counsel: No appearance by or for Appellants
D R Kalderimis and K E Yesberg for Respondent
Judgment: 12 November 2015 at 2.30 pm

JUDGMENT OF THE COURT

- A The application is granted and the appeal struck out.**
- B The appellants are to pay the respondent's costs of the application as for an application for leave to appeal on a band A basis plus usual disbursements.**
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REASONS OF THE COURT

(Given by Wild J)

[1] This is an application by the respondent under r 37(1) of the Court of Appeal (Civil) Rules 2005 to strike out this appeal.

[2] The appeal was filed on 26 March 2015. It is against a judgment delivered in the High Court at Wellington on 3 March by Mallon J.¹ Mallon J struck out the appellants' proceeding against the respondent. In her judgment, Mallon J expressed her satisfaction "that the proceeding has no prospect of success".² She took the view that the way in which the respondent had dealt with an inquiry Mr Siemer had made on behalf of the appellants (although without disclosing that he was inquiring on their behalf) was not amenable to review: it was not a decision of a public nature although Mr Siemer was inquiring about matters of public interest.

[3] The Deputy Registrar declined the appellants' application to dispense with security for the costs of the appeal. On review, that decision was upheld by Randerson J.³ The Supreme Court refused leave to appeal from that judgment.⁴ The Supreme Court also declined a subsequent application for recall of its leave decision.⁵

[4] The appellant Mr Rabson had also applied on 9 June for a four-month extension of time for the appellants to file their case on appeal and apply for a hearing date. In a minute and direction issued on 4 August, Wild J declined to deal with that application, on the basis that there was no point in doing so unless and until the appellants gave security for the costs of the appeal.⁶ The appellant Mr Rabson applied to the Supreme Court for leave to appeal from that minute and direction, which he termed a "non-decision".⁷ The Supreme Court refused leave to appeal.⁸ The Supreme Court subsequently dismissed an application by Mr Rabson for recall of its judgment refusing leave.⁹

[5] Security for the costs of this appeal is required and must be given before the appellants can apply for a hearing date. Security has not been given. Accordingly,

¹ *Rabson v Transparency International (New Zealand) Inc* [2015] NZHC 334.

² At [22].

³ *Rabson v Transparency International New Zealand Inc* [2015] NZCA 188.

⁴ *Rabson v Transparency International New Zealand Inc* [2015] NZSC 111.

⁵ *Rabson v Transparency International New Zealand Inc* [2015] NZSC 121.

⁶ *Rabson v Transparency International New Zealand Inc* CA156/2015, 4 August 2015 (Minute and Directions of Wild J).

⁷ *Rabson v Transparency International New Zealand Inc* CA156/2015, 1 September 2015 (Minute (No 2) and Direction of Wild J) at [4].

⁸ *Rabson v Transparency International New Zealand Inc* [2015] NZSC 145.

⁹ *Rabson v Transparency International New Zealand Inc* [2015] NZSC 153.

the respondent's application to strike out the appeal is properly grounded and must succeed.

[6] Additionally — and significantly — there was no appearance by or for the appellants when this application was heard on 9 November.

[7] For all those reasons, this appeal is struck out.

[8] The appellants are to pay the respondent's costs of the application as for an application for leave to appeal on a band A basis plus usual disbursements.

Solicitors:
Chapman Tripp, Wellington for Respondent