

IN THE COURT OF APPEAL OF NEW ZEALAND

CA31/2015  
[2015] NZCA 69

BETWEEN VINCENT ROSS SIEMER AND JANE  
DINSDALE SIEMER  
Appellants

AND KEVIN STANLEY BROWN & ORS  
Respondents

Counsel: Appellant in Person  
A M Powell for Respondents

Judgment: 16 March 2015 at 11.30 am  
(On the papers)

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**JUDGMENT OF WILD J**  
**[Review of Registrar's decision]**

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**The Registrar's decision is upheld. Security for costs of \$11,760 is to be paid by Friday 17 April 2015.**

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**REASONS**

[1] Mr Siemer applies for a review of the Registrar's decision of 3 March 2015 refusing his application to dispense with security for the costs of this appeal. As there are 15 respondents to the appeal, security was set at \$11,760.

[2] In the appeal, filed on 22 January, Mr Siemer challenges the decision of Toogood J declining to recuse himself from hearing and deciding a proceeding Mr Siemer had brought against the 15 defendants. The proceeding claimed damages or compensation, including aggravated and punitive damages, against the police officers involved in a search of Mr Siemer's home on 21 February 2008, the Court Registrar who issued the search warrant and the Attorney-General.

[3] Toogood J tried the case over a number of days in October and November 2013 and March 2014, and delivered his judgment on 11 December 2014.<sup>1</sup> The judgment is lengthy, reflecting the need for the Judge to work through eight different causes of action against the various defendants. After summarising his findings in [183] of the judgment, Toogood J states:

[184] The result is that I have dismissed all of the plaintiffs' claims against all of the defendants; the plaintiffs are not entitled to remedies.

[4] Toogood J deals with Mr Siemer's recusal application toward the start of the judgment, in [10]–[15]. He records Mr Siemer's counsel, Mr C S Henry, had made a recusal application upon hearing the case was assigned to Toogood J, and renewed it at the start of the hearing. The Judge sets out the grounds for the recusal application. Essentially, Mr Siemer submitted the manner in which Toogood J had dealt with past cases and matters involving Mr Siemer disqualified him from trying the present case. The Judge went in some detail into those previous matters. I need not. The Judge explained why he had declined to stand aside in this way:

[15] I concluded in this case that those considerations continued to apply and that a principled approach to the issue in terms of the Supreme Court's judgment in *Saxmere* did not make it appropriate that I should recuse myself. I declined to do so.

[5] In applying to the Registrar under r 35(6) for an order dispensing with security, Mr Siemer contended his appeal raised "exceptional circumstances ... of genuine public interest on the elementary right to an impartial judge".

[6] His application states:

5. An informed decision requires the Registrar consider the substantive judgment which confirms the required legal test was not applied to the trial judge's conflict and bias, as well as evidence contained in the court record, a transcript of closing arguments not yet in hand of the Appellants, thereby preventing its submission with this application.

[7] The nub of the Registrar's decision is this paragraph:

I do not accept that the issues you raise in your appeal are exceptional or of interest to the greater public. They are specific to you and your perceived

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<sup>1</sup> *Siemer v Brown* [2014] NZHC 3175.

bias of the Judge. I do not believe you could be called a fair-minded lay-observer when most, if not all, of the reasons you requested the Judge to recuse himself stem from complaints and allegations made by you about him.

[8] Notwithstanding his invitation to the Registrar set out in [6] above, in his review application Mr Siemer complains:

1. It was not within the powers of the Registrar to determine the legal question as to whether the High Court trial judge failed to apply the proper test and analysis to his alleged bias. Indeed, the Rejection failed altogether to attempt to do so, instead deciding: (and he then sets out the paragraph quoted in [7] above).

...

3. That the Registrar was not capable as a lay person to otherwise engage in such an interpretation of law requires an opinion of a judicial officer, which is hereby requested.

[9] I have read the judgment under appeal (all of it) and Mr Siemer's notice of appeal. In my assessment there is not the genuine public interest in this appeal which might warrant the respondents being required to deal with the appeal unprotected by security for costs. Appeals involving a question of genuine public interest or concern often involve the Crown, generally as respondent. In such cases the rationale for dispensing with security is that the Crown, as proxy for the New Zealand public, can go without security because the appeal is of real interest and concern to it.

[10] In this case Mr Siemer and other members of his family brought a private claim for damages arising out of what they alleged was the unlawful search of the Siemer home. Mr Siemer unsuccessfully applied for the Judge assigned to the case to recuse himself. In declining the application, the Judge applied *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd*,<sup>2</sup> in which the Supreme Court gave authoritative guidance on recusal. I cannot discern any genuine public interest in Mr Siemer's challenge to a Judge's application of well established principles in a piece of private litigation. I have not overlooked that the plaintiffs claimed the

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<sup>2</sup> *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.

search breached their rights under ss 21, 22 and 23 of the New Zealand Bill of Rights Act 1990.

[11] Mr Siemer has, of course, the right to appeal the Judge's decision as he has done. But, testing security for costs in the way mandated by the Supreme Court in *Reekie v Attorney-General*, I do not accept this is an appeal which a solvent appellant would reasonably wish to pursue.<sup>3</sup> In putting the matter that way, I am of course assuming in Mr Siemer's favour that he is impecunious. I am *not* to be taken as accepting he is.

[12] In the result, having reviewed the Registrar's decision, I uphold it. The Registrar directed security must be paid by 31 March 2015. I extend the time for payment to *Friday 17 April 2015*.

Solicitors:  
Crown Law Office, Wellington for Respondents

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<sup>3</sup> *Reekie v Attorney-General* [2014] NZSC 63.