

IN THE COURT OF APPEAL OF NEW ZEALAND

CA855/2012
[2014] NZCA 158

BETWEEN MALCOLM EDWARD RABSON
Appellant
AND WAYNE SEYMOUR CHAPMAN
Respondent

Hearing: 7 April 2014
Court: O'Regan P, White and Miller JJ
Counsel: No appearance for Appellant
S A Barker and K L Hamill for Respondent
Judgment: 29 April 2014 at 10.30 am

JUDGMENT OF THE COURT

- A The appeal is struck out.**
B The appellant is to pay the respondent's costs for a standard application on a band A basis and usual disbursements.
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REASONS OF THE COURT

(Given by White J)

[1] The respondent, Mr Chapman, applies for an order striking out an appeal by the appellant, Mr Rabson, under r 37 of the Court of Appeal (Civil) Rules 2005 because security for costs has not been paid. Mr Rabson's appeal is against the decision of Kós J granting Mr Chapman vacant possession of a property.¹

[2] Mr Rabson has not filed any opposition to the strike-out application and did not appear at the hearing of the application. Instead he filed a document suggesting

¹ *Chapman v Rabson* [2012] NZHC 3322.

that he had not been served with the application.

[3] We are satisfied for the following reasons that the appeal should be struck out:

- (a) Mr Rabson has not paid the security for costs of \$5,880 as set by the Registrar of this Court on 11 January 2013. Attempts by Mr Rabson to have security dispensed with or reduced have all been unsuccessful.²
- (b) It is an inevitable consequence of a failure to pay security for costs that the appeal will be struck out.³
- (c) Notwithstanding Mr Rabson's suggestion to the contrary, there is now affidavit evidence before the Court (the affidavit of N H Whalley dated 10 April 2014) that Mr Rabson was served with the strike-out application and was, in any event, aware of the hearing date.
- (d) The Official Assignee has now filed a memorandum dated 14 April 2014 confirming that Mr Rabson was adjudicated bankrupt on 18 March 2013 and that, in accordance with ss 117 and 118 of the Insolvency Act 2006 and decisions of this Court and the Supreme Court,⁴ the Official Assignee has formally abandoned this appeal. As a consequence of Mr Rabson's adjudication in bankruptcy, he has no standing to pursue the appeal which vested in the Official Assignee.⁵

Result

[4] The appeal is therefore struck out.

[5] Mr Rabson is to pay Mr Chapman's costs for a standard application on a

² *Rabson v Chapman* [2013] NZCA 5 and *Rabson v Gallagher* [2013] NZSC 65.

³ *Corbett v Legal Complaints Review Officer* [2011] NZCA 223.

⁴ *Hart v ANZ Bank New Zealand Ltd* [2013] NZCA 94 at [33] and *Hart v ANZ Bank New Zealand Ltd* [2013] NZSC 44 at [11].

⁵ Insolvency Act 2006, s 101.

band A basis and usual disbursements. We do not certify for two counsel.

Solicitors:
Buddle Findlay, Wellington for Respondent