

IN THE COURT OF APPEAL OF NEW ZEALAND

[2014] NZCA 481

BETWEEN MALCOLM EDWARD RABSON  
Applicant

AND REGISTRAR OF THE SUPREME  
COURT  
First Respondent

MINISTRY OF JUSTICE  
Second Respondent

Judgment: 2 October 2014 at 10.00 am  
(On the papers)

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**JUDGMENT OF FRENCH J  
(Review of Deputy Registrar's Decision)**

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- A The application for review of the Deputy Registrar's decision refusing to accept the applicant's notice of appeal for filing is granted.**
- B The applicant's notice of appeal is accepted for filing as at 27 August 2014.**
- C An extension of time is granted for the payment of security for costs. The applicant must pay security for costs or apply to the Registrar for dispensation of security within 20 working days of the date of this judgment.**
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**REASONS**

[1] On 27 August 2014 Mr Rabson purported to file a notice of appeal in this Court against a minute of Dobson J.<sup>1</sup> The minute relates to judicial review proceedings Mr Rabson and Mr Siemer issued in the High Court at Wellington against the Registrar of the Supreme Court and the Ministry of Justice. Mr Siemer was not entitled to bring the proceedings without first obtaining leave<sup>2</sup> and, because Messrs Rabson and Siemer were seeking relief jointly, Dobson J held that the proceedings ought not to have been accepted for filing.

[2] The Deputy Registrar of this Court refused to accept Mr Rabson's notice of appeal for filing on the ground that he is an undischarged bankrupt.

[3] Mr Rabson wishes to challenge that decision, and has asked for the matter to be referred to a judge under r 7(2) of the Court of Appeal (Civil) Rules 2005.

[4] Under s 101(1)(b) of the Insolvency Act 2006, the powers that an undischarged bankrupt could have exercised in, over, or in respect of any property for the bankrupt's own benefit vest in the Official Assignee. Contrary to a submission made by Mr Rabson, judicial review proceedings are not an exception to that rule.

[5] However, Mr Rabson also contends that in any event the Official Assignee has already notified the courts that he has no interest in the proceeding at issue. In support of that contention Mr Rabson has provided a copy of a letter from the Official Assignee. Although the letter is dated 3 April 2013 (before the current proceedings were issued), it does relate to the matter Mr Rabson sought to bring before the High Court.

[6] Yet while the Official Assignee does appear to have waived his interest in the proceeding, it is questionable whether the effect of that waiver is that Mr Rabson himself may pursue the appeal. Where the Assignee formally disclaims "onerous property" under s 117 of the Insolvency Act, it is clear that all rights, interests and

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<sup>1</sup> *Siemer v Registrar of the Supreme Court* HC Wellington CIV-2014-485-10918, 25 August 2014.

<sup>2</sup> Mr Siemer is subject to orders under s 88B of the Judicature Act 1908 preventing him from taking steps in relation to certain types of proceedings without leave, including proceedings that relate directly or indirectly to his dispute with Mr Stiassny. The judicial review proceedings fall within that category.

liabilities of the bankrupt in relation to that property are brought to an end.<sup>3</sup> However, it is less clear whether a non-statutory abandonment process sits alongside that statutory regime, allowing the Assignee to abandon property rights in common law and the bankrupt to then take over those rights.<sup>4</sup>

[7] That issue is not appropriate for determination on a r 7(2) review. It should be addressed by a panel of three judges.

[8] The application for review is accordingly granted. Mr Rabson's notice of appeal is accepted for filing as at 27 August 2014, the original filing date. The issue as to whether Mr Rabson is in fact entitled to bring the appeal will be dealt with at the substantive hearing.

[9] To ensure Mr Rabson is not disadvantaged by the delay, an extension of time is granted for Mr Rabson to pay security for costs. Mr Rabson must pay security for costs or apply to the Registrar for dispensation of security within 20 working days of the date of this judgment.

Solicitors:  
Crown Law Office, Wellington for Respondents

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<sup>3</sup> Insolvency Act 2006, s 118.

<sup>4</sup> See *Judd v Official Assignee* [2000] 2 NZLR 135 (CA); *De Alwis v Luvit Foods International* HC Auckland CIV-2002-404-1944, 24 March 2010; and Philip Morris "Powers and Duties of Official Assignee" in Paul Heath and Michael Whale (eds) *Insolvency Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2014) 155 at [6.6].