IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2008-404-8468

BETWEEN	PENELOPE MARY BRIGHT Appellant
AND	AUCKLAND CITY COUNCIL Respondent

Hearing: Matter determined on the papers

Judgment: 3 March 2009 at 10:15 am

JUDGMENT OF ASHER J

This judgment was delivered by me on 3 March 2009 at 10:15 am
pursuant to Rule 11.5 of the High Court Rules

…………………………………………….
Registrar/Deputy Registrar

…………………………………………….
Date

P Bright, 86a School Road, Kingsland, Auckland
Meredith Connell, PO Box 2213 Auckland

[1] After a hearing I issued a judgment on 20 February 2009 refusing Ms Bright's request that the appellant's obligation to pay security for costs of $800.00 be dispensed with. The hearing was recorded. Ms Bright has now filed a document intituled "Application without notice by appellant Penelope Mary Bright for the full transcript of the hearing of security for costs heard by J Asher on 18 February 2009".

[2] As I indicated in a minute of 20 February 2009, an application for a transcript of such a Court recording of an interlocutory hearing without evidence should be by way of application on notice, setting out the grounds for the application. The transcript will only be prepared and made available if there is good reason to do so.

[3] This application is filed without notice and is not in the proper form. The matter is urgent, as the time remaining to pay security for costs is very limited. Such an application should have been on notice. However, in the circumstances, and given the fact that I have formed the view on the papers that the application cannot succeed, I proceed on a without notice basis.

[4] The body of the document is not in fact an application, but rather submissions.

[5] Ms Bright seeks the transcript relying on r 20.14 of the High Court Rules. At paragraph (5) she states:

> 5. The plaintiff (appellant) contends that the transcript of the hearing before Justice Asher will clearly show that (1) the fee waiver (a sworn submission to the Court) was granted on impecuniousness, and (2) the defence counsel undermined the 'lack of merit' argument before Justice Asher by orally admitting in submissions that the plaintiff has been successful on the merits of the case "legislatively". Both these reservations – apparent in the transcript – undermine the basis of the defence arguments for security costs, as well as undermine any judicial ruling for security for costs.

[6] At the hearing of the application to dispense with security for costs Ms Bright and the Council made submissions. There was no affidavit evidence or any oral evidence.

[7] The application rests on the supposition that there has been an appeal, and the transcript is relevant to the appeal. This is incorrect. No application for leave to appeal has been filed in relation to the security for costs judgment. The basis on which the application is founded is therefore not established.

[8] Further r 20.14(1) gives the Court the power to order the transcript of "all or part *of the evidence* given at the hearing before the decision-maker" (emphasis added). The application pre-supposes that evidence was given. There was no evidence given at the hearing and the rule does not apply.

[9] Moreover, the application pre-supposes that comments or statements made at the hearing were evidence, whereas in fact they were only submissions. There is no suggestion of any dispute between the parties about what was said in the submissions. In any event, it will only be in uncommon cases that a contest as to what was said in submissions will be relevant to the issues on appeal.

[10] There being no appeal or application for leave to appeal, and in any event there being no good reason put forward to have the recording transcribed, I decline the application.

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Asher J