

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

**CIV 2016-485-129
[2017] NZHC 2344**

BETWEEN CLARENCE JOHN FALOOON
Appellant

AND THE COMMISSIONER OF PATENTS,
TRADEMARKS AND DESIGNS
Respondent

CIV 2016-485-189

BETWEEN CLARENCE JOHN FALOOON
Appellant

AND THE COMMISSIONER OF INLAND
REVENUE
Respondent

Hearing: 18 September 2017 (Teleconference)

Counsel: Appellant in Person
M Shaw for Official Assignee
R May for Commissioner of Patents
I Bryant for Commissioner of Inland Revenue

Judgment: 26 September 2017

JUDGMENT OF CHURCHMAN J

[1] By Minute issued on 11 August 2017 this Court confirmed that following the filing of notices of discontinuance by the Official Assignee in proceedings CIV 2016-485-129 and CIV 2016-485-189 these proceedings were judged as having been dismissed pursuant to r 20.12(2) of the High Court Rules. Deputy

Registrar Dixson had issued certificates dated 19 June 2017 in respect of each matter confirming that the proceedings had been dismissed.

[2] I note that in [7] of the Court's Minute of 11 August there is reference to the certificate of Deputy Registrar Dixson in relation to the matter CIV 2016-485-129 having been issued on 19 June 2016. This is an error and the certificate was issued on 19 June 2017.

[3] The Minute of the Court of 11 August 2017 recorded that the application by Mr Faloon to set aside both of these certificates was dismissed.

[4] By application dated 14 August 2017 Mr Faloon applied under r 7.49 of the High Court Rules to vary or rescind the decision dated 11 August 2017. Mr Faloon filed an affidavit in support dated 14 August 2017.

[5] Counsel for the Official Assignee filed a memorandum dated 13 September 2017 submitting that if Mr Faloon wished to challenge the decision of the Assignee to discontinue the proceedings he was obliged to do so in the context of the bankruptcy and that he could not do so in these proceedings as there was no live proceeding and, even if there was, Mr Faloon had no standing (being an undischarged bankrupt).

[6] By memorandum dated 13 September 2013 Mr Faloon purported to seek directions pursuant to rr 8.4 and 30.3. The directions were sought in relation to proceedings CIV 2016-485-129 and CIV 2016-485-189 notwithstanding that these proceedings had been discontinued and the Court had confirmed on 11 August 2017 that it would not set aside either of the certificates dismissing the proceedings pursuant to r 20.12(2) of the High Court Rules.

[7] Rule 7.49 permits a party affected by a decision given on an interlocutory application to apply to the Court to vary or rescind the order if that party considers that the order or decision is wrong. This is as an alternative to appealing the order.

[8] Pursuant to r 7.49(6) the Judge hearing the application, if satisfied that the decision is wrong may vary or rescind it.

[9] Rule 7.49 will only be engaged in the following circumstances:¹

- (a) when there was not full argument at the initial hearing;
- (b) if some relevant point of evidence was overlooking;
- (c) if there has been a material change of circumstances; or
- (d) some other special circumstance has arisen.

[10] In rambling submissions Mr Faloon did not engage with the relatively limited circumstances in which r 7.49 can be invoked to vary or rescind in order or judgment. None of the criteria set out in *Carter v Coroners Court at Wellington* exist as:

- (a) there was full argument on 7 August 2017;
- (b) no relevant point of evidence was overlooked;
- (c) there has been no material change in circumstances and neither has any other special circumstance arisen.

[11] The written submissions filed by Mr Faloon dated 18 September 2017 and emailed by him to the Court on the afternoon of Sunday, 17 September 2017 refer to what is described as a “statement of claim dated 11 September 2017 applying for an “Extraordinary remedy” under part 30 of the High Court Rules”.

[12] A copy of that document was not on the Court file available to me. When I queried Mr Faloon about it he stated that he had filed it by post and had checked with the Court Registrar that morning to confirm it had been received.

¹ *Carter v Coroners Court at Wellington* [2015] NZHC 2998 at [11].

[13] What he neglected to tell me was that he had been advised by the Registrar that the document had been rejected on the basis that proceedings CIV 2016-485-129 and CIV 2016-485-189 had been discontinued and it was not possible to file any further documents in relation to these proceedings.

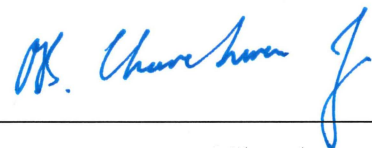
Decision

[14] Mr Faloon has not been able to identify any basis upon which it would be appropriate for the Court to vary or rescind the orders of the Court confirming dismissal of the proceedings in these matters.

[15] I accept the submission of counsel for the Official Assignee that if Mr Faloon wishes to challenge any decision or action taken by the Official Assignee in relation to his bankruptcy, he cannot do that in these proceedings and can only do so in the context of the bankruptcy.

[16] In filing applications where he has given no thought to the legal basis of the application Mr Faloon is wasting the Court's time and that of the respondents. If he persists in such activity he risks being declared a vexatious litigant.

[17] Accordingly, the application under r 7.49 is dismissed. If the respondents wish to make application for costs they should file memoranda within 14 days with Mr Faloon having seven days to reply.

A handwritten signature in blue ink, appearing to read "J. Churchman", is written above a horizontal line.

Churchman J