

IN THE SUPREME COURT OF NEW ZEALAND

**SC 62/2008
[2008] NZSC 98**

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND FERRIER HODGSON AND MICHAEL
 PETER STIASSNY
 Respondents

Court: Blanchard, Tipping and McGrath JJ

Counsel: Applicant in Person
 P J L Hunt for Respondents

Judgment: 19 November 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Ferrier Hodgson and Mr Stiassny are suing several defendants for defamation. In a judgment given on 19 April 2007¹ Rodney Hansen J struck out portions of the statement of defence filed by the first and second defendants, Mr Siemer and Paragon Services Ltd, because they were irrelevant, scandalous or contrary to proper pleading practice. The Court of Appeal² has now reviewed and confirmed those decisions by the Judge.

[2] Rodney Hansen J's judgment also dealt with an application by the same defendants for further and better discovery. He declined to so order save that he did

¹ *Ferrier Hodgson v Siemer*, (unreported, High Court, Auckland, CIV 2005-404-1808, Rodney Hansen J, 19 April 2007).

² *Siemer v Ferrier Hodgson* [2008] NZCA 255.

direct the plaintiffs to file an affidavit concerning the existence of a particular email communication. The Court of Appeal also reviewed and confirmed those rulings.

[3] Mr Siemer has now sought leave to appeal to this Court. None of the issues traversed by the Court of Appeal raises a question of public or general importance or gives rise to any concern that the rulings made by Rodney Hansen J will create any miscarriage of justice. They therefore do not meet the criteria for leave.

[4] However, in his application and in his submissions in support Mr Siemer asserts actual or apparent bias on the part of the Judge who delivered the reasons of the Court of Appeal, Hammond J. Mr Siemer says that at a meeting in 2001 Mr Stiassny referred to Hammond J as his “good mate”. Mr Siemer and his wife, who were both present at the meeting, have since the submissions were filed verified this occurrence by affidavits.

[5] The Court has, in accordance with normal practice, given both Mr Stiassny and the Judge an opportunity of responding. In an affidavit, Mr Garrett, a manager at Mr Stiassny’s firm, has described a meeting on 8 March 2001 at which Hammond J’s name was mentioned. He does not remember the context but recalls Mr Stiassny turning to him and making the comment “our old mate”. He explains that the remark was ironic as in a completely unrelated court case involving one of Mr Stiassny’s receiverships (*Dymocks v Bilgola*), which was nothing to do with Mr Siemer or his company, Hammond J had consistently ruled against the receivers, to their frustration.

[6] Mr Stiassny, in his affidavit, confirms that the remark was made by him and that it was ironic. He further says that he has had no personal or social contact with Hammond J, nor any other contact aside from involvement in litigation arising from his insolvency practice.

[7] For his part, Hammond J, having referred to litigation determined by him in the High Court in favour of Mr Siemer’s company, says that he does not know Mr Stiassny and has never had any dealings with him other than through court proceedings.

[8] We do not consider that there is any possibility that the allegation of bias could be made out. Indeed, bias, whether actual or apparent, could never have been responsibly alleged. The allegation provides no basis for a grant of leave, which is accordingly refused.

[9] It is our understanding that Mr Siemer has recently been adjudicated bankrupt. In that circumstance we make no order for costs against him.

Solicitors:
McElroys, Auckland for Respondents