

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2008-404-5500

CIV-2010-404-2050
NZHC [2012] 31

BETWEEN GRACE HADEN
First Plaintiff

AND VERISURE INVESTIGATIONS
LIMITED
Second Plaintiff

AND NEIL EDWARD WELLS
First Defendant

AND WYN HOADLEY
Second Defendant

AND GRAEME JOHN COUTTS
Third Defendant

Hearing: On the papers

Counsel: E Orlov for First and Second Appellants
ND Wright for Respondent

Judgment: 1 February 2012

JUDGMENT OF RODNEY HANSEN J

*This judgment was delivered by me on 1 February 2012 at 4.30 p.m.,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Solicitors: Equity Law, P O Box 8333, Symonds Street, Auckland 1150
Brookfields, P O Box 240, Shortland Street, Auckland 1140

[1] Mrs Haden applies for a review of a Registrar's decision refusing to file documents tendered for filing. The documents which Mrs Haden sought to file in person comprise what is described as "Application for review section 4 Judicature Amendment Act 1972 and Stay of enforcement, section 17.29 High Court Rules Due to new evidence" (the application for review) and a supporting affidavit.

[2] The review of the Registrar's decision is sought under r 2.11 of the High Court Rules which relevantly provides:

2.11 Review of Registrar's decision

(1) An affected party to a proceeding or an intended proceeding may apply to a Judge by interlocutory application for a review of any of the following:

...

(b) a Registrar's refusal to file a document tendered for filing:

...

(2) The Judge may, on review, make any orders he or she thinks just.

...

The application for review was made within the time limit of five working days prescribed by subparagraph (4) of the rule.

[3] Mrs Haden's application for review is a further attempt to challenge a judgment given by Judge Joyce QC in the District Court at Auckland.¹ He found Mrs Haden had defamed the defendant, Mr Wells. He awarded general damages of \$50,000 and exemplary damages of \$7,500. I dismissed Mrs Haden's appeal² and refused leave to appeal to the Court of Appeal.³ The Court of Appeal rejected Mrs Haden's application for special leave to appeal.⁴

¹ *Wells v Haden* [2008] DCR 859.

² *Haden v Wells* HC Auckland CIV-2008-404-5500, 20 November 2009.

³ *Haden v Wells* HC Auckland CIV-2008-404-5500, 23 June 2010.

⁴ *Haden v Wells* [2010] NZCA 591.

[4] Mrs Haden also sought to challenge the District Court judgment by way of judicial review proceedings. Her application was dismissed by Allan J.⁵

[5] Mrs Haden's application is in the form of a memorandum to the Court in which she refers to new evidence which has come into her possession which she says "is material in every respect and impacts significantly on the validity of the statement of claim". She states that it shows that "[Mr Wells] has been less than honest with the Court resulting in gross injustice" to the plaintiffs. The application goes on to state that it is in the interests of justice that "this matter is sent back for a new trial". Orders are sought declaring that the decision of Judge Joyce is invalid and either setting aside the decision and seeking a retrial or granting some other form of relief. The supporting affidavit annexes a large quantity of documents relied on as constituting the new evidence.

[6] The Registrar did not give a written decision when rejecting the documents. However, in a memorandum written following filing of the application to review his decision, he said:

The decision to reject the documents was that it was a judicial review of a High Court Judge's decision which is not allowed pursuant to the Judicature Act.

[7] The Registrar has power to refuse to file a document which does not comply with formal requirements for documents – see r 5.2 of the High Court Rules and *Te Toki v Pratt*.⁶ Acceptance will usually be the appropriate course in case of non-compliance with rules relating to form⁷ and also where there are deficiencies in documents for reasons other than non-conformity with the rules – see *Fuimaono v Housing NZ Ltd*⁸ where Ellis J held that it was not the function of the Registry to decide whether or not the filing of a particular document is out of time. It should be accepted and left to the parties to object and the Court to decide.⁹ However, in cases where the deficiencies are gross and palpable and the documents are not capable of giving rise to legal consequences, the Registrar is justified in refusing leave.

⁵ *Haden v Wells* HC Auckland CIV-2010-404-2050, 25 November 2010.

⁶ *Te Toki v Pratt* (2002) 16 PRNZ 160 (HC).

⁷ *Ibid*, at [16].

⁸ *Fuimaono v Housing NZ Ltd* (2000) 15 PRNZ 115 (HC).

⁹ *Ibid*, at [7].

[8] This is undoubtedly such a case. The documents are fundamentally deficient in form. Section 9(1) of the Judicature Amendment Act 1972 and r 30.3 provides that an application for review shall be made by motion accompanied by a statement of claim. Section 9(2) stipulates that the statement of claim shall state the facts on which the claim to relief is based; the grounds on which relief is sought and the relief sought. The originating document filed in this case is neither a motion (now to be read as a reference to a notice of proceeding: r 30.3(4)) or a statement of claim. It can best be described as a memorandum of argument. It fails to give adequate notice of the claim. It could not be responded to in any meaningful way. Further, for the reason shortly stated by the Registrar, even if the documents substantially conformed with the formal requirements, a third attempt by Mrs Haden to challenge the District Court decision in this Court could not possibly succeed.

[9] The application to review the Registrar's decision is accordingly dismissed.

W. M. M. J.