

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

**CIV-2013-404-002890
[2013] NZHC 1639**

BETWEEN GRACE HADEN
Applicant

AND NEIL EDWARD WELLS
First Respondent

WINIFRED NORIAN HOADLEY
Second Respondent

GRAEME JOHN COUTTS
Third Respondent

Hearing: 9 July 2013

Appearances: Applicant in person
B Atkins for Respondents

Judgment: 10 July 2013

JUDGMENT OF ELLIS J

This judgment was delivered by Justice Ellis
on 10 July 2013 at 4.00 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date.....

[1] Ms Haden has sought a dispensation of the standard security for costs that would ordinarily be ordered in her appeal. The application is opposed by the respondents.

[2] The application is somewhat unusual because Ms Haden says that she is not impecunious, notwithstanding that the cost to her of this and other related litigation has clearly been high. Indeed, it was her inability immediately to raise funds to meet an order of costs for some \$12,000 on an interlocutory application in the District Court that led to her being debarred from defending the proceedings in that Court. It is those proceedings (and her inability to defend them) that, in a general way, form the backdrop to these subsequent proceedings and, in particular, the judgment that she now seeks to appeal.

[3] Rather, the basis for Ms Haden's application is that:

- (a) she has paid security in the past and the amounts paid have not been uplifted by the respondents, which (she says) means she has paid costs twice;
- (b) costs that have been previously awarded against her have been wrongly and/or falsely calculated.

[4] She also made submissions to me about the merits of her appeal and filed a quantity of supporting material.

[5] Unlike security for costs in first instance matters (which is governed by r 5.45), the ordering of security on appeals is, essentially the default position. Exceptional circumstances must be established to warrant a waiver.

[6] While I do not doubt Ms Haden's sincerity, she is not able to meet the required threshold in this case. Even if she were able to establish the grounds she relies on (and the respondents have indicated that the allegations I have set out at [3] above are not accepted) they have little, if any, bearing on the issue. The first matter is something that Ms Haden will need to resolve with the respondents and with the

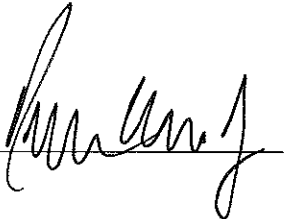
relevant registry. She has indicated that she is already taking separate steps to pursue the second matter. Importantly, there is nothing before me that suggests that making a standard order for security will prevent her from pursuing the appeal.

[7] Ms Haden's application is therefore declined. She is to pay security in the sum of \$995 to the Registrar within ten working days of the date of this decision. If she does not do so then, by virtue of s 74(2) of the District Courts Act 1947, the appeal will be treated as having been abandoned and will be dismissed without any further call before this Court.

[8] On the assumption that security will be paid I also make the following directions in relation to the appeal:

- (a) Ms Haden is to file and serve a common bundle of numbered and indexed copies of all relevant documents no later than 20 working days prior to the 4 September hearing date.
- (b) She is to file and serve his submissions and a chronology (if relevant) no later than 15 working days prior to the date of the hearing.
- (c) The respondents are to file and serve their submissions and a chronology (if there is disagreement) no later than ten working days prior to the date of the hearing.
- (d) The remaining provisions of the Sixth Schedule are to apply to this appeal.

[9] Lastly, I record that Ms Haden has advised that she very sensibly no longer pursues her challenge to the respondents' choice of legal representation.



R Ellis J