IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2016-404-000716
[2017] NZHC 2941

BETWEEN	BEVIN HALL SKELTON Intending Plaintiff
AND	CHARLES MICHAEL HOWCROFT First Intended Defendant
AND	DARAN NAIR Second Intended Defendant
AND	CHARLES HENRY BIRD Third Intended Defendant

Hearing:	On the papers
Counsel:	Intending Plaintiff in person B M Cunningham for First Intended Defendant E J L Werry for Second Intended Defendant
Judgment:	29 November 2017

JUDGMENT OF PAUL DAVISON J
[Re: interlocutory application seeking leave to appeal]

This judgment was delivered by me on 29 November 2017 at 4.30 pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors:
BSA Law, Auckland
McDonald Law, Auckland

[1] The intending plaintiff, Mr Bevin Hall Skelton (Mr Skelton) now brings an interlocutory application seeking leave to appeal to the Court of Appeal from my judgment delivered on 4 October 2017 dismissing an application to extend time. In brief the background is as follows.

[2] On 11 April 2016 Mr Skelton filed an interlocutory application seeking orders for particular pre-commencement discovery against Mr Charles Howcroft, described as the intended defendant. He subsequently filed an amended application to include Mr Darren Nair and Mr Charles Bird as further intended defendants. The intended defendants, Mr Howcroft and Mr Nair, applied for an order directing Mr Skelton to pay security for costs in relation to Mr Skelton's application for pre-commencement discovery orders.

[3] I delivered a judgment on 30 May 2017 in which I made orders granting the intended defendants' application and directing Mr Skelton to provide security for costs in the sum of $15,000 in respect of each of the first and second intended defendants, Mr Howcroft and Mr Nair. I further ordered that if such security for costs was not paid by 4pm on Friday, 14 June 2017, the proceeding would be thereupon stayed until such security was paid.[1]

[4] Mr Skelton did not seek leave to appeal from that judgment. However, three months later, on 1 September 2017, he filed an interlocutory application seeking an order granting an extension of time within which to apply by way of further interlocutory application for an order to vary or rescind my judgment and orders relating to the payment of security for costs.

[5] By a judgment dated 4 October 2017, I dismissed Mr Skelton's application for an extension of time.[2] In that judgment I said:

> [3] Mr Skelton seeks an extension of time on the grounds that, in summary, the five day deadline was not achievable given his situation, the respondents withheld information, and that granting the application is in the interests of justice as the point appears to be novel. The substantive ground on which Mr Skelton seeks to have the decision varied or rescinded is that

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1 *Skelton v Howcroft* [2017] NZHC 1149.
2 *Skelton v Howcroft* [2017] NZHC 2425.

> there is no jurisdiction to order security for costs on an application for pre-commencement discovery as there is no "proceeding" as required by r 8.20.

[6] I determined that the High Court does have jurisdiction to make an order requiring the payment of security for costs in respect of an application for pre-commencement discovery orders made pursuant to r 8.20 of the High Court Rules.

[7] As noted above, Mr Skelton now applies for leave to appeal to the Court of Appeal from my judgment of 4 October 2017 in which I rejected his application for an extension of time to apply to the Court for rescission of the orders for security for costs made in my judgment of 30 May 2017.

[8] The present application is a further attempt by Mr Skelton to re-litigate and re-argue matters that have already been extensively addressed by the Court. Mr Skelton did not apply for leave to appeal from my judgment of 30 May 2017 in which the orders for security for costs were made. He applied for an extension of time to apply to rescind the security for costs judgment and order. That application was rejected following consideration of the substance of his application to rescind the security for costs orders, which was made on the grounds that the orders were made without jurisdiction. In my judgment of 4 October 2017 I found that the High Court does have jurisdiction to make orders requiring the payment of security for costs in the context of an application for pre-commencement discovery orders.

[9] This brief background is only a small part of the history of this matter. A fuller account of the background is set out in my judgment of 30 May 2017, in which I set out a summary of the long history of litigation between Mr Skelton, Mr Howcroft and Mr Nair, and which involved a settlement in August 2008, and an earlier proceeding in relation to the same matter brought by Mr Skelton, having been struck out by this Court in a judgment delivered by Asher J on 24 April 2015.[3] That judgment was appealed and dismissed by the Court of Appeal.[4] Mr Skelton's subsequent application for leave to appeal to the Supreme Court was also dismissed.[5]

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3 *Skelton v Nair* [2015] NZHC 832.
4 *Skelton v Nair* [2015] NZCA 316.
5 *Skelton v Nair* [2015] NZSC 169.

[10] In support of his present application Mr Skelton has filed an affidavit and memorandum. In his affidavit he summarises his argument in support of the proposition that the High Court has no jurisdiction to make an order for the security of costs in connection with an application for pre-commencement discovery brought under r 8.20. I do not consider that there is any substance or merit in his submissions.

[11] Mr Skelton's present application, in which he seeks leave of the High Court to appeal pursuant to s 53 of the Senior Courts Act 2016, does not in my view involve any issue of public importance or any question of law such as would warrant or require further consideration or determination of this issue by the Court of Appeal.

[12] There being no apparent merit in Mr Skelton's present application and no utility in a further consideration of these issues by the Court of Appeal, I decline his application for leave to appeal from my judgment delivered on 4 October 2017 in which I dismissed his application to extend time to apply to rescind orders made in my judgment of 4 October 2017.

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Paul Davison J