

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA550/2020
[2020] NZCA 628**

BETWEEN	RAJENDRA PRASAD Appellant
AND	INDIANA PUBLICATIONS (NZ) LIMITED First Respondent
AND	IRENE LAL Second Respondent
AND	VENKAT RAM Third Respondent
AND	MAHESH PARERA Fourth Respondent
AND	CHENCHU NAGULU Fifth Respondent

Court: Brown, Gilbert and Courtney JJ

Counsel: Appellant in person
No appearance for Respondents

Judgment: 7 December 2020 at 9.30 am
(On the papers)

JUDGMENT OF THE COURT

A The appeal is struck out.

B The Registry is directed not to accept for filing any documents from Mr Prasad without the prior leave of a Judge.

REASONS OF THE COURT

(Given by Gilbert J)

[1] Mr Prasad appeals against a decision of Walker J striking out as an abuse of process judicial review proceedings commenced by him in the High Court in 2020.¹ The Judge found that Mr Prasad was attempting through the proceedings to relitigate alleged infringement of copyright issues which were initially raised in proceedings filed by him in May 2003 and finally determined against his interests in April 2006.

[2] The respondents advised this Court that they do not intend to participate in the appeal. Their solicitor explained that “[a] few years ago the Court had made an Order that the Court Registry is not to accept any documents for filing by [Mr Prasad]” and that “[he] has been attempting to relitigate [the] same matter for the last 20 years”.

[3] In a minute dated 16 November 2020, Clifford J directed that consideration should be given to whether the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court before the appeal is set down for hearing. The Judge directed that Mr Prasad was to file written submissions within 10 working days of the date of the minute and advised that the matter would then be considered on the papers.

[4] On the same day the minute was issued, Mr Prasad, who is not legally represented, filed a case on appeal and a “synopsis on appeal/judgment”. He had earlier filed a “submission for judgment” and a memorandum, both dated 25 September 2020. Mr Prasad then filed a “memorandum on judicial directions” on 17 November 2020, asking the Court to disregard both the “submission for judgment” and the 25 September 2020 memorandum and instead focus solely on the costs orders he seeks in relation to his bankruptcy proceedings. Finally, Mr Prasad filed a document entitled “submission on minutes — 16th for judgm[e]nt” in response to Clifford J’s minute. This document largely comprises a history of the proceedings, as well as a submission that the respondents have made allegations of “vexatious, frivolous, abuse of process ... and [are] now making wild, false claim and accusations of re-litigation in ... this Court”. Mr Prasad claims that his “entry point in this matter

¹ *Prasad v Indiana Publications (NZ) Ltd* [2020] NZHC 2384 [High Court judgment].

is 1st September 2005, free of any prior Judgments, parties, obligations and is not responsible for any prior activities, on following grounds of assignment”.

[5] Having reviewed the materials filed and the background to the present proceedings, we are satisfied that the High Court was correct to strike out the proceedings as an abuse of process. This appeal must be struck out for the same reason.

Background

[6] In May 2003, Mr Prasad issued proceedings in the District Court at Manukau against Ravin Lal, as the principal of Indiana Publications (NZ) Ltd (Indiana) (the first copyright proceedings). Mr Prasad claimed that he held copyright in a business directory named “Indian Bizz”, being its “exclusive creator, author and publisher”.² He alleged that Mr Lal infringed copyright by publishing a rival publication in March 2003 and in 2004.

[7] On 19 July 2003, Mr Prasad filed an affidavit stating that the correct plaintiff in the proceeding should be his company, Sage Group Ltd, and that Indiana should be added as a defendant. An amended statement of claim was filed on 17 June 2004 advancing causes of action for infringement of copyright, breach of s 9 of the Fair Trading Act 1986 and passing off. The amendments were formally granted by Judge Simpson on 20 July 2004.

[8] The proceedings were heard in the Manukau District Court in June 2005. Mr Prasad appeared on behalf of Sage Group Ltd. In a reserved judgment delivered on 29 August 2005, Judge Blackie dismissed the claims and entered judgment for the defendants.³ The Judge found that Sage Group Ltd was the owner of the directories and was therefore the correct plaintiff. Indeed, there was no dispute about this. However, the Judge found that the defendants had not infringed copyright because there was no objective similarity between the allegedly infringing work and the copyright work or any substantial part of the copyright work. The Judge found

² *Indiana Publications (NZ) Ltd v Prasad* [2010] NZCA 111 at [2].

³ *Sage Group Ltd v Indiana Publications (NZ) Ltd* DC Manukau CIV-2003-092-4034, 29 August 2005.

that the two directories were entirely different. There was also no breach of the Fair Trading Act and no passing off.

[9] An appeal pursued by Mr Prasad on behalf of Sage Group Ltd to the High Court was dismissed by Asher J in a judgment delivered on 13 April 2006.⁴

[10] On 2 November 2006, Sage Group Ltd, which by then had changed its name to World Commerce NZ Ltd, was placed in liquidation for failing to pay costs awarded against it in the proceedings. The Official Assignee was appointed liquidator.

[11] In October 2007, Mr Prasad, purportedly on behalf of World Commerce NZ Ltd (in liquidation), applied approximately 17 months out of time for leave to appeal against Asher J's judgment. This application, which was made without the consent of the Official Assignee, was dismissed by Asher J on 6 November 2007.⁵

[12] In December 2007, Mr Prasad applied to the Court of Appeal in his own name for special leave to appeal the substantive decision of Asher J dated 13 April 2006. This application was dismissed for want of jurisdiction on 19 March 2008.⁶

[13] Mr Prasad applied to the Supreme Court for leave to appeal against the decision of the Court of Appeal. The Registrar declined to accept the application. The Registrar's decision was confirmed by Blanchard J in a minute issued on 16 April 2008.

[14] Undeterred, in June 2008, Mr Prasad issued fresh proceedings in the Manukau District Court against Mr Lal, Indiana and various other defendants claiming that he was the sole copyright owner in the Indian Bizz directory (the second copyright proceedings). His second claim largely mirrored that in the earlier proceedings and alleged infringement of copyright, breach of the Fair Trading Act and passing off. He also alleged a breach of the National Library of New Zealand Act 2003. The defendants responded by applying for summary judgment, invoking the doctrine of res judicata. The application came before Judge Blackie on 19 January 2009, but

⁴ *Sage Group Ltd v Indiana Publications Ltd* HC Auckland CIV-2005-404-5424, 13 April 2006.

⁵ *Sage Group Ltd v Indiana Publications Ltd* HC Auckland CIV-2005-404-5424, 6 November 2007.

⁶ *Prasad v Indiana Publications Ltd* [2008] NZCA 70.

he recused himself because Mr Prasad had complained about him to the Judicial Conduct Commissioner. On 17 February 2009, Mr Prasad wrote to the Court advising that the “matter is now discontinued in this court and removed into the High Court”.

[15] On 20 February 2009, the rescheduled date for hearing of the summary judgment application, Judge Andrée Wiltens entered summary judgment for the defendants.⁷ There was no appearance for Mr Prasad. This judgment was subsequently set aside by Wylie J on 3 August 2009 on the basis that Mr Prasad’s letter of 17 February 2009 amounted to a discontinuance of the District Court proceedings before judgment was entered.⁸

[16] In the meantime, on 27 July 2009, Associate Judge Doogue dismissed the parties’ respective applications for summary judgment in the 2009 High Court proceedings (the third copyright proceedings).⁹ On 16 November 2009, the Associate Judge granted the defendants’ application for a stay of the proceedings pending determination of an appeal to the Court of Appeal and declined Mr Prasad’s application for the substantive proceeding to be transferred to this Court.¹⁰

[17] In December 2009, Mr Prasad filed judicial review proceedings challenging the refusal of his application for an adjournment of the June 2005 hearing in the District Court. This judicial review proceeding was struck out by Cooper J on 25 May 2010 on the basis Mr Prasad lacked standing to bring it and the proceeding was in any event an abuse of process.¹¹ The Judge noted that the issues raised by Mr Prasad related to the substantive issues in the first copyright proceedings that had been finally determined by Asher J in 2006 and in respect of which this Court declined leave in 2008.¹² Cooper J subsequently dismissed Mr Prasad’s recall application and another application to amend his statement of claim and add additional respondents.¹³

⁷ *Prasad v Indiana Publications (NZ) Ltd* DC Manukau CIV-2008-092-2719, 20 February 2009.

⁸ *Prasad v Indiana Publications (NZ) Ltd* (2009) 19 PRNZ 816 (HC).

⁹ *Prasad v Indiana Publications (NZ) Ltd* HC Auckland CIV-2009-404-856, 27 July 2009.

¹⁰ *Prasad v Indiana Publications (NZ) Ltd* HC Auckland CIV-2009-404-856, 16 November 2009.

¹¹ *Prasad v Manukau District Court* HC Auckland CIV-2009-404-8484, 25 May 2010.

¹² At [25]. See also *Prasad v Indiana Publications Ltd*, above n 6.

¹³ *Prasad v Manukau District Court* HC Auckland CIV-2009-404-8484, 25 June 2010.

[18] On 30 March 2010, the Court of Appeal allowed the defendants' appeal against the refusal of summary judgment on Mr Prasad's third copyright proceedings.¹⁴ This Court struck out those proceedings as an abuse of process. On 28 May 2010, the Supreme Court declined Mr Prasad's application for leave to appeal against this judgment.¹⁵

[19] On 11 November 2010, Mr Prasad was adjudicated bankrupt.¹⁶

[20] On 23 July 2012, Mr Prasad filed further proceedings in the High Court advancing nine causes of action against 24 defendants (including the respondents) including claims for alleged infringement of copyright (the fourth copyright proceedings). These proceedings were struck out as an abuse of process by Associate Judge Christiansen on 5 October 2012.¹⁷ The Associate Judge made an order directing the Registry not to accept for filing any documents from Mr Prasad relating to his copyright claims.¹⁸

[21] Mr Prasad applied directly to the Supreme Court for leave to appeal against this decision. One of the two issues he sought to raise on appeal was "[t]he question of whether copyright in 'INDIAN Bizz' was owned by Mr Prasad or his company". The Supreme Court declined the leave application on 6 November 2012, finding that the issue had already been finally determined in this Court's decision of 30 March 2010.¹⁹ Mr Prasad's subsequent recall application was declined by the Supreme Court on 14 November 2012.²⁰

[22] Mr Prasad then applied to the High Court for a review of the decision of Associate Judge Christiansen to strike out the fourth copyright proceedings. Whata J declined that application on 15 March 2013, noting that Mr Prasad was "seeking to

¹⁴ *Indiana Publications (NZ) Ltd v Prasad*, above n 2.

¹⁵ *Prasad v Indiana Publications (NZ) Ltd* [2010] NZSC 60.

¹⁶ *Indiana Publications (NZ) Ltd v Prasad* HC Auckland CIV-2010-404-3333, 11 November 2010.

¹⁷ *Prasad v Indiana Publications (NZ) Ltd* [2012] NZHC 2582.

¹⁸ At [47].

¹⁹ *Prasad v Indiana Publications (NZ) Ltd* [2012] NZSC 93 at [4], referring to *Indiana Publications (NZ) Ltd v Prasad*, above n 2.

²⁰ *Prasad v Indiana Publications (NZ) Ltd* [2012] NZSC 97.

rewrite history through these proceedings”.²¹ The Judge later declined Mr Prasad’s application to recall this decision.²²

[23] Shortly after the fourth copyright proceedings were filed (CIV-2012-404-4172) Mr Prasad filed further proceedings in the High Court (CIV-2012-404-4324). These proceedings were styled “Judicial Review for Miscarriage of Justice, From Serious Breach, Ignorance, Misunderstanding and Misrepresentation of Copyright Act 1994” (the fifth copyright proceedings). Associate Judge Christiansen struck out the amended statement of claim filed in these proceedings on 11 September 2013.²³

[24] Mr Prasad applied for a review of this decision. That application was dismissed by Venning J on 18 October 2013.²⁴ Venning J directed the Registrar not to accept for filing any purported proceedings from Mr Prasad relating to infringement of copyright or the associated costs order that had led to his bankruptcy.²⁵

[25] On 20 June 2014, the Supreme Court dismissed Mr Prasad’s application for leave to appeal against Venning J’s decision and two further decisions of Wild J in the Court of Appeal directing the Registrar not to accept documents for filing from Mr Prasad without the prior leave of a Judge.²⁶ Mr Prasad’s subsequent application for recall was dismissed by the Supreme Court on 25 June 2014.²⁷

[26] Some four years later, in 2018, Mr Prasad applied to the Supreme Court for recall of its 28 May 2010 judgment refusing leave to appeal against the Court of Appeal’s judgment striking out his third copyright proceedings as an abuse of process. The Supreme Court dismissed this application as well as a related application for an extension of time to appeal, on 21 May 2018.²⁸

[27] Still undeterred, in 2020, Mr Prasad commenced judicial review proceedings in the High Court seeking various relief including “re-opening” the High Court

²¹ *Prasad v Indiana Publications (NZ) Ltd* [2012] NZHC 3521 at [17].

²² *Prasad v Indiana Publications (NZ) Ltd* [2013] NZHC 498.

²³ *Prasad v Attorney-General* [2013] NZHC 2371.

²⁴ *Prasad v Attorney-General* [2013] NZHC 2721.

²⁵ At [20]–[21].

²⁶ *Prasad v Indiana Publications (NZ) Ltd* [2014] NZSC 78.

²⁷ *Prasad v Indiana Publications (NZ) Ltd* [2014] NZSC 81.

²⁸ *Prasad v Indiana Publications (NZ) Ltd* [2018] NZSC 48.

proceedings issued in 2009 (the third copyright proceedings), “revisiting” the decision of Associate Judge Doogue made in those proceedings on 27 July 2009 (referred to at [16] above) and issuing an amended judgment clarifying the proper interpretation of ss 16 and 130 of the Copyright Act 1994. Mr Prasad identifies the key issue in his statement of claim as follows: “Respondents violated both sections in all Court, is the issue.”

[28] The grounds on which review is sought are expressed in the following way (omitting particulars):

a) Applicant was not heard in this Case ...

b) Litigation was not defended ...

...

c) Opened all doors for Applicant under s 120, effective from 1/03/02, commencement of Copyright **INDIAN Bizz, ISBN No: 0-473-08478-3** and closed all doors against all Respondents on 27/07/09, under s 130, until expiry of exclusive rights s 16 on expiry of Copyright s 22 of Applicant, after 50 years of his death

d) Applicant is affected and seeks remedy that there have been a misunderstanding, interpretation, lack of transparency from serious breach of Law, that caused a serious miscarriage of justice to the Applicant.

[29] Three “causes of action” are listed. The first alleges that “s 16 and s 130 is preclusion against all Respondents until expiry of Copyright”. In relation to this cause of action, Mr Prasad seeks judgment for loss of income in the sum of \$9 million calculated from 2003 until 30 June 2020.

[30] In his second cause of action, Mr Prasad claims that the first respondent “acquired Cost Orders as clearly laid down in Law and Rules, wrong party benefited for undesirable relief, Sealed ..., applicable to Plaintiff”. Mr Prasad elaborates that “Indiana Publications (NZ) Limited unlawfully, deceitfully acquired by misleading all levels of courts as ... cost is legally given to Applicant under s 120 of the Act”. In respect of this cause of action, Mr Prasad seeks costs in the sum of \$371,302.

[31] Mr Prasad’s third cause of action repeats that the Court “made all Cost Orders as clearly laid down in the Law and Rules, which was unlawfully, deceitfully acquired

by Indiana Publications (NZ) Limited by misleading all levels of courts". He claims "all losses in terms of personal property, punitive, damages, defamation, act of disgrace thrust upon by Respondents, as submitted in Judgment, to be deposited in [High Court]". He seeks losses resulting from his bankruptcy in the sum of \$7,049,500.

High Court judgment

[32] Walker J struck out the judicial review proceedings for reasons given in a judgment delivered on 14 September 2020. The Judge found that the proceeding was an abuse of process.²⁹ Mr Prasad had not identified a reviewable decision justiciable in the High Court. The Judge considered Mr Prasad was in reality seeking to relitigate the question of copyright ownership and infringement.³⁰ The Judge concluded as follows:

[32] I am mindful that access to justice is central to the proper functioning of the legal system and particularly in the judicial review jurisdiction. Access, however, is not guaranteed for proceedings which are frivolous, vexatious or otherwise an abuse of the Court's processes. Proceedings of those kind waste valuable court resources, and risk bringing the justice system into disrepute.

[33] The cumulative effect of these proceedings leaves no doubt in my mind that this proceeding is yet another attempt to re-litigate the alleged breach of copyright on which Mr Prasad is fixated. As Cooper J said in an earlier judicial review attempt:

"it is apparent from the submissions that he addressed to me that Mr Prasad either fails to understand or chooses not to understand the implications of the various Court decisions which have been delivered in this matter".

(Footnote omitted.)

Assessment

[33] As will be obvious from the foregoing summary, this appeal is plainly frivolous, vexatious and an abuse of process. It is the Court's duty to strike it out.

[34] The 2009 proceedings in the High Court (the third copyright proceedings) were struck out as an abuse of process by this Court.³¹ The Supreme Court declined leave

²⁹ High Court judgment, above n 1, at [26].

³⁰ At [28].

³¹ *Indiana Publications (NZ) Ltd v Prasad*, above n 2.

to appeal against this Court’s decision in May 2010.³² Mr Prasad’s application eight years later to recall that decision was declined by the Supreme Court in May 2018.³³ The proceedings having been struck out as an abuse of process, and all appeal rights from that decision having been exhausted, it is simply not open to Mr Prasad to commence judicial review proceedings seeking to “re-open” the proceedings or “revisit” the High Court judgment (that was overturned on appeal) so that the High Court may issue an “Amended Judgment”. In any event, the High Court cannot judicially review its own judgments.

[35] While the notice of appeal refers only to the judgment of Walker J, the case on appeal refers to the judgments of Judge Andrée Wiltens and Wylie J dated respectively 20 February 2009 and 3 August 2009 (referred to at [15] above). Appeal rights in respect of these judgments have also been exhausted and there is no basis on which Mr Prasad can now be permitted to revisit those judgments by way of judicial review proceedings in the High Court or otherwise.

Result

[36] The appeal is struck out.

[37] The Registry is directed not to accept for filing any documents from Mr Prasad without the prior leave of a Judge.

³² *Prasad v Indiana Publications (NZ) Ltd*, above n 15.

³³ *Prasad v Indiana Publications (NZ) Ltd*, above n 28.