

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA737/2012
[2013] NZCA 96**

BETWEEN	EVGENY ORLOV Applicant
AND	THE NATIONAL STANDARDS COMMITTEE (NO 1) First Respondents
AND	THE AUCKLAND STANDARDS COMMITTEE (NO 1) Second Respondent
AND	THE NEW ZEALAND LAW SOCIETY Third Respondent

Counsel: Applicant in person
W C Pyke for Respondents

Judgment: 11 April 2013 at 3.00 pm
(On the papers)

JUDGMENT OF ELLEN FRANCE J

The application for review of the Registrar’s decision refusing to waive or vary the payment of security for costs is declined. The applicant must pay security in the amount of \$5,880 within 20 working days of the date of this judgment.

REASONS

Introduction

[1] The applicant, Mr Orlov, filed an appeal and applied to the Registrar for a dispensation from the requirement to pay security for costs. By letter dated 19 February 2013, the Registrar declined the application on the basis that the

applicant had not provided sufficient evidence of impecuniosity. The Registrar did not accept there was no urgency in meeting the requirement to pay costs. This is an application for review of the Registrar's decision.

Background

[2] The New Zealand Law Society has proceedings on foot against Mr Orlov. The Society formed the view that there were grounds to apply to the High Court in its inherent jurisdiction to suspend Mr Orlov from practice. The Society applied to the High Court to inspect and copy various court files concerning matters in which Mr Orlov acted as counsel. Each of the court files relates to a proceeding where the judgment includes an adverse comment about Mr Orlov's alleged conduct as counsel.

[3] The application was dealt with by Katz J. Her Honour treated the application as one for access made under r 3.13 of the High Court Rules. The Judge decided that the Society could inspect the files. Further, the Society could keep copies of any documents on the files but had to keep the documents confidential and could use them only for the purposes of its investigations relating to Mr Orlov.¹ If the respondents wished to use any of the copied documents in proceedings before the Lawyers and Conveyancers Disciplinary Tribunal or the High Court, they would first have to seek further directions from the Court.

[4] In reaching this view, Katz J was satisfied that in seeking access the Society was "acting in accordance with its statutory functions and responsibilities in relation to the control and regulation of lawyers".² The Judge was also satisfied there was "clear prima facie evidence" that the files may contain information "directly relevant" to the discharge of the Society's functions.³

[5] Mr Orlov filed an appeal against this judgment. Katz J declined to grant a stay pending resolution of the appeal.⁴

¹ *National Standards Committee (No 1) v Orlov* [2012] NZHC 2911.

² At [34].

³ At [35].

⁴ *National Standards Committee (No 1) v Orlov* [2012] NZHC 3140.

[6] The appeal was initially allocated to the Fast Track on the application of the respondents. However, the allocated fixture date of 20 March 2013 was adjourned by me on the application of Mr Orlov.⁵ The respondents opposed an adjournment. The matter now has a fixture date of 6 August 2013.

Security for costs

[7] The principles applicable to the present application are well-settled. They are set out as follows in *Jong v Yang*:⁶

[8] In the normal course, appellants in civil proceedings in this Court are required to pay security for costs. If an appellant wishes to apply to the Registrar for a waiver of security, he or she must do so within 20 days of filing the appeal. The Registrar may vary or waive security “if satisfied that the circumstances warrant it”. A party who is dissatisfied with the Registrar’s decision may apply to a Judge for a review of the Registrar’s decision. Such an application must be made within 10 working days after the decision, although a Judge may extend that time limit.

[9] Security for costs will be waived where it is in the interests of justice to do so. Given that the normal rule is that security must be provided, there will need to be some exceptional circumstance to justify waiver. The circumstances of the appeal are relevant, in the sense that the appellant must honestly intend to pursue it and it must be arguable – respondents should not face the threat of hopeless appeals without provision for security. The importance of the issues raised in the appeal will be significant, as will the question whether there is any public interest in having them determined. Impecuniosity alone is not usually sufficient to justify a waiver, but may be reason to reduce the quantum of security.

Discussion

[8] Mr Orlov applies for a review of the Registrar’s decision on the grounds that his current financial circumstances are such that he cannot pay security now. He seeks a reduction and/or waiver of security or deferral of payment for three months. He also relies on what he sees as the public interest issues raised by his appeal.

[9] In opposing the application, Mr Pyke for the respondents says there is nothing before the Court to demonstrate impecuniosity. Mr Pyke also submits the issues raised by the appeal are not as broad as Mr Orlov contends.

⁵ *Orlov v National Standards Committee (No 1)* CA737/2012, 1 March 2013.

⁶ *Jong v Yang* [2010] NZCA 343 (footnotes omitted).

[10] As was the case for the Registrar when the matter was before her, I have no evidence to support a claim of impecuniosity. In any event, impecuniosity alone does not mean security for costs should be dispensed with.

[11] Nor am I satisfied Mr Orlov has established there is anything of an exceptional character in the appeal that warrants a waiver or reduction in security for costs. The appeal relates to an application to inspect court files and it is difficult to discern from the grounds of appeal the exact nature of the public interest said to arise from the proposed appeal. In any event, to the extent any public interest arises, I consider that interest is adequately met by the fact Mr Orlov has, simply because of the effluxion of time since security was due (on 15 February 2013), achieved his desired deferral of payment. The respondents are entitled to some protection for their costs in responding to the appeal. Accordingly, I consider the Registrar was right to require Mr Orlov to pay \$5,880 by way of security for costs.

Decision

[12] The application for review of the Registrar's decision refusing to waive or vary the payment of security for costs is declined. The applicant must pay security in the amount of \$5,880 within 20 working days of the date of this judgment.

Solicitors:
Harkness Henry & Co, Hamilton for Respondents