

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 90/2018  
[2019] NZSC 91**

BETWEEN	DERMOT GREGORY NOTTINGHAM Applicant
AND	MALTESE CAT LIMITED First Respondent
	CLYDE MACLEAN Second Respondent
	ELIZABETH CURRIE Third Respondent

Hearing: 18 March 2019

Court: William Young, O'Regan and Ellen France JJ

Counsel: Applicant in person  
D J D van Hout for Respondents

Judgment: 22 August 2019

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**JUDGMENT OF THE COURT**

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- A      The application for leave to appeal is dismissed.**
- B      There is no order as to costs.**
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**REASONS**

[1] Mr Nottingham sought leave to appeal to this Court from a decision of the Court of Appeal declining to grant an application for an extension of time to file the case on appeal and seek the allocation of a hearing date.<sup>1</sup> We held a hearing in relation

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<sup>1</sup> *Nottingham v Maltese Cat Ltd* [2018] NZCA 387 (Kós P, Miller and Williams JJ).

to this application and a minute of the Court subsequently was issued on 18 March 2019. In the minute, the Court recorded that the interests of justice may be better served were the parties to agree to seek recall of the Court of Appeal judgment on the basis an extension of time was appropriate.<sup>2</sup> The parties were asked to advise the Court whether or not they agreed to proceed on that basis. If that was not the course the parties preferred, the Court noted that a judgment on the application for leave would be issued.

[2] The parties agreed to proceed on the basis that an application for recall of the Court of Appeal judgment would be sought. The Court of Appeal subsequently granted the application for recall by consent. The application for an extension of time to file the case on appeal and seeking a hearing date was granted until 7 June 2019 to ensure Mr Nottingham's application for dispensation from security could be determined. Later, in a judgment delivered on 24 June 2019, Brown J dealt with security for costs.<sup>3</sup>

[3] Meanwhile, the application for leave to appeal to this Court remains extant. The respondents' position is that now the Court of Appeal order has been made recalling that Court's judgment, the application for leave to appeal should be stayed with the issue as to costs reserved. Mr Nottingham's position is that his application for leave to appeal to this Court should remain live until the Court of Appeal sets the matter down for hearing in that Court. He also submits there should be no issue in relation to costs.

[4] The application for leave to appeal related to the Court of Appeal's judgment declining to grant an extension of time. That issue has been resolved by the steps taken in the Court of Appeal and there is now nothing for this Court to deal with in respect of that application. As to costs, we agree with Mr Nottingham that he has been successful in that he has effectively achieved the result he sought in this Court. There

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<sup>2</sup> That was because it was arguable whether an application for an extension of time should have been granted. There had been no reference to r 37(2) of the Court of Appeal (Civil) Rules 2005 which prevented the allocation of a hearing date while Mr Nottingham's application for security for costs was outstanding and there was an issue about the finality of the relevant decision of the High Court. See *Maltese Cat Ltd v Doe* [2017] NZHC 1728.

<sup>3</sup> *Nottingham v Maltese Cat Ltd* [2019] NZCA 246.

is therefore no issue as to costs for the respondents. As Mr Nottingham notes he is self-represented so nor is there any issue as to his costs in this Court.<sup>4</sup>

[5] Accordingly, the application for leave to appeal is dismissed. We make no order as to costs.

Solicitors:  
Jones Law, Auckland for Respondents

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<sup>4</sup> The filing fees were waived.