

IN THE SUPREME COURT OF NEW ZEALAND

SC 28/2012  
[2012] NZSC 87

BETWEEN

ROBERT ERWOOD  
Applicant

AND

JANET MAXTED AND JANET  
MAXTED AND ALEXANDER JAMES  
JEREMY GLASGOW AS TRUSTEES OF  
THE ESTATE OF EDWARD ERWOOD  
Respondents

Court: Elias CJ and McGrath J

Counsel: Applicant in person

Judgment: 18 October 2012

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**JUDGMENT OF THE COURT (RECALL)**

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**The application for recall is dismissed.**

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**REASONS**

[1] Mr Erwood applies for the recall of this Court's judgment, delivered on 3 October 2012,<sup>1</sup> which dismissed his application for leave to appeal from a Court of Appeal judgment in a case in which he had sought to have a bankruptcy notice set aside.<sup>2</sup>

[2] Mr Erwood states that, prior to delivery of the Court's judgment, he had told Registry staff that he would object to either William Young J or Chambers J being members of the panel that determined his leave to appeal application. No formal objection was received and his foreshadowed objection did not come to the attention

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<sup>1</sup> *Erwood v Maxted* [2012] NZSC 81.

<sup>2</sup> *Erwood v Maxted* [2012] NZCA 110.

of Judges who decided the application. The present application for recall is based first on those two Judges being part of the panel that refused leave and secondly on the claim that the judgment refusing leave did not address certain points raised by Mr Erwood.

[3] After filing his application for recall, Mr Erwood left a telephone message for the Registrar in which he objected to participation of the third Judge who was on the panel refusing him leave to appeal. His objection to McGrath J was:

because he was one of the judges who sat with the two judges I am objecting to and also I have complained about what they have done. They haven't dealt with my case...

Again, no formal application was made.

[4] The fact that a Judge has participated in a decision which is subject of an application for recall does not demonstrate apparent bias that would preclude determining that application. Nor does the fact that a litigant has complained about the Judge's actions. McGrath J is accordingly able to participate in determining the recall application. The present panel (comprising Elias CJ and McGrath J) has considered afresh the merits of the matters raised by Mr Erwood on the leave application. No further comment is accordingly required in respect of the objection to the other permanent Judges participating.

[5] At the heart of the matter is Mr Erwood's failure to pay costs he was ordered to pay by an Associate Judge. The grounds he advanced for leave to appeal and recall cover assertions about matters of evidence, concessions as to his liability to pay monies, requests of third parties to make payment, awards of costs, Mr Erwood's alleged incapacity in the proceedings, his difficulties in obtaining legal representation and alleged breaches of natural justice. Mr Erwood is, however, required under s 13 of the Supreme Court Act 2003 to show that his application raises a point that makes it necessary in the interests of justice for the Court to hear and determine the proposed appeal. We are satisfied that none of the matters he raises meet that test and in particular we are satisfied no miscarriage of justice has occurred in the decision of the Court of Appeal.

[6] The application for recall is accordingly dismissed.