

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 101/2021  
[2021] NZSC 191

BETWEEN GARTH BOWKETT PATERSON  
Applicant

AND LEPIONKA & COMPANY  
INVESTMENTS LIMITED  
First Respondent

STEFAN JOZEF JOHN LEPIONKA, JOE  
DUNCAN AND GREGORY BERNARD  
HORTON AS TRUSTEES OF THE  
LEPIONKA BUSINESS TRUST  
Second Respondents

LEPIONKA & COMPANY LIMITED  
Third Respondent

STEFAN JOZEF JOHN LEPIONKA AND  
NIGEL WARREN HUGHES AS  
TRUSTEES OF THE SJ LEPIONKA  
FAMILY TRUST  
Fourth Respondents

STEFAN JOZEF JOHN LEPIONKA  
Fifth Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person  
M G Colson QC and S J Leslie for Respondents

Judgment: 23 December 2021

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**JUDGMENT OF THE COURT**

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**A The application for recall of this Court's judgment of 3 December 2021 (*Paterson v Lepionka & Co Investments Ltd* [2021] NZSC 171) is allowed only to make the change identified at [2] below.**

**B The [2021] NZSC 171 judgment is reissued with this change.**

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**REASONS**

[1] In seeking the recall of our judgment of 3 December 2021 dismissing his application for leave to appeal,<sup>1</sup> the applicant asserts that we did not address issues properly before us: first, whether a bank cheque had been delivered to the first respondent, Lepionka & Co Investments Ltd (LCIL); and second, what is said to be LCIL's "pre-planned scheme to use a transfer under the Land Transfer Act for the designed purpose of cheating those with known interests" in the property affected. As to this we observe:

- (a) The delivery issue has been determined in other proceedings adversely to the applicant and the argument which he wished to advance on appeal was referred to, albeit in general terms, at [9] of this Court's judgment dismissing leave as an abuse of process. The earlier proceedings in which the issue had been dealt with were identified.
- (b) Mr Paterson only sought leave to appeal against two parts of the Court of Appeal decision, those dealing with the malicious prosecution claim and the bankruptcy adjudication. The alleged "pre-planned scheme" issue was dealt with by the Court of Appeal in other parts of its judgment and was thus not the subject of his notice of application for leave to appeal and was accordingly not dealt with in the leave judgment.

[2] The applicant also identifies a number of what are said to be misstatements. In relation to one of them, a comment made at [6(a)] of the leave judgment, there is an apparent error. This has been corrected in a reissued judgment which is being

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<sup>1</sup> *Paterson v Lepionka & Co Investments Ltd* [2021] NZSC 171.

released simultaneously with this judgment.<sup>2</sup> It was of no practical moment in relation to the disposition of the application for leave to appeal. We do not accept that the other alleged misstatements were in error.

[3] So, save that the leave judgment is to be reissued with a revised [6(a)], the application for recall is dismissed.

Solicitors:  
Bell Gully, Wellington for Respondents

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<sup>2</sup> The former wording of the comment at [6(a)] was: “They are predicated on GLW having taken title to the Hawke’s Bay land as trustee for the trust but otherwise cover the same ground as the first mortgagee proceedings.” This is replaced by the following sentence in the reissued judgment: “These proceedings largely cover the same ground as the first mortgagee proceedings.”