

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 6/2021
[2021] NZSC 98

BETWEEN ERIC MESERVE HOUGHTON
 Applicant

AND TIMOTHY ERNEST CORBETT
 SAUNDERS, SAMUEL JOHN MAGILL,
 JOHN MICHAEL FEENEY, CRAIG
 EDGEWORTH HORROCKS, PETER
 DAVID HUNTER, PETER THOMAS AND
 JOAN WITHERS
 First Respondents

 CREDIT SUISSE PRIVATE EQUITY
 INCORPORATED
 Second Respondent

 CREDIT SUISSE FIRST BOSTON ASIAN
 MERCHANT PARTNERS LP
 Third Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: A J Gavigan as Applicant
 A R Galbraith QC, D J Cooper and M C Harris for First
 Respondents (other than Mr Magill and Ms Withers)
 T C Weston QC and M C Harris for Mr Magill
 B D Gray QC and A E Ferguson for Ms Withers
 J B M Smith QC, A S Olney and C J Curran for Second and Third
 Respondents

Judgment: 12 August 2021

JUDGMENT OF THE COURT

**Mr Gavigan must pay the respondents collectively
costs of \$2,500.**

REASONS

[1] In our judgment dismissing Mr Gavigan's application to recall our judgment dismissing his leave application, we reserved costs.¹ We gave the respondents leave to file a memorandum if they sought costs. They have now done so and Mr Gavigan has replied.

[2] The applicants seek costs of \$2,500 for the first respondents collectively and \$2,500 for the second and third respondents. Mr Gavigan opposes any award.

[3] Mr Gavigan not only filed submissions, but also other material relating to the allegations of fraud referred to in the recall judgment.² This material was filed without first obtaining leave and, in any event, has no relevance to the present application for costs. If leave had been sought to admit this material, we would have declined it. We have not taken the material into account in determining the present application for costs.

[4] We consider an award of costs is appropriate given the application for recall lacked merit and was irregular in a number of respects. The respondents were required to respond to it. But we see a single award to all respondents as better reflecting the effort required from the respondents collectively to respond to the application. In the circumstances we award costs of \$2,500 to the respondents collectively. In the absence of agreement to the contrary among the respondents, this should be divided equally between the first respondents on the one hand and the second and third respondents on the other.

Solicitors:

Gilbert Walker, Auckland for First Respondents

Russell McVeagh, Wellington for Second and Third Respondents

¹ *Houghton v Saunders* [2021] NZSC 76 [Recall judgment] at [9]. An application to recall the recall judgment was dismissed: *Houghton v Saunders* [2021] NZSC 92.

² At [4].