

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 55/2022
[2022] NZSC 100

BETWEEN MARTIN MAILLEY
Applicant

AND ANTONY SHAW
First Respondent

NEW ZEALAND LAW SOCIETY
Second Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person

Judgment: 25 August 2022

JUDGMENT OF THE COURT

The application for recall of this Court's judgment of 3 August 2022 (*Mailley v Shaw* [2022] NZSC 93) is dismissed.

REASONS

[1] On 3 August 2022, this Court dismissed Mr Mailley's application for leave to appeal against a judgment of Collins J of 12 May 2022.¹ In that judgment, Collins J had dismissed an application to recall his judgment in *Mailley v Shaw* which had declined an application to review the Deputy Registrar's decision concerning security for costs.²

[2] Mr Mailley makes an application for the recall of the 3 August 2022 leave judgment of this Court.

¹ *Mailley v Shaw* [2022] NZCA 180 (Collins J).

² *Mailley v Shaw* [2022] NZCA 41 (Collins J).

[3] The general rule is that a judgment, once delivered, must stand for better or worse, subject to appeal.³ A decision to recall a judgment will only be made in exceptional circumstances, such as those set out in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)*.⁴ A recall application cannot be used to relitigate the reasons provided in the leave judgment.⁵

[4] Nothing Mr Mailley has advanced warrants recall. Mr Mailley is merely attempting to relitigate the issues already dealt with in our leave judgment.⁶

[5] The application for recall of this Court's judgment of 3 August 2022 is dismissed.

³ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633 as cited in *Craig v Williams* [2019] NZSC 60 at [10].

⁴ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2].

⁵ *Nuku v District Court at Auckland* [2018] NZSC 39 at [2].

⁶ Mr Mailley says that the parties did not refer this Court to the Court of Appeal decision in *Skelton v Howcroft* [2018] NZCA 140 which confirmed the Court of Appeal's decision in *Sutcliffe v Tarr* [2017] NZCA 360, [2018] 2 NZLR 92. That is not in fact correct. Both cases were referred to in Mr Mailley's original leave submissions and the submissions for the second respondent also made reference to *Sutcliffe v Tarr*.