

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 5/2020
[2022] NZSC 11

BETWEEN	LESLIE NORMAN AUSTIN Applicant
AND	ROCHE PRODUCTS (NEW ZEALAND) LIMITED Respondent

Court: Glazebrook, O'Regan, Ellen France, Williams and Arnold JJ

Counsel: G J Thwaite for Applicant
J A MacGillivray for Respondent
J B Orpin-Dowell for Accident Compensation Corporation as Intervener

Judgment: 22 February 2022

JUDGMENT OF THE COURT

- A The application for recall of this Court's judgment of 16 June 2021 (*Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 62) is allowed only to make the change identified at [4] below.**
- B The [2021] NZSC 62 judgment is reissued with this change.**
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REASONS

[1] The applicant applies to recall our judgment of 16 June 2021,¹ which stayed our earlier dismissal of his appeal.² The stay was to allow the applicant to seek a review out of time of the Accident Compensation Corporation's decision that his injury was covered under the Accident Compensation Act 2001. It was time bound to

¹ *Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 62 [stay decision].

² *Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 30 [substantive decision].

encourage the applicant to proceed with expedition.³ The applicant did promptly apply for review under s 135 of the Act. His application was dismissed by ACC, and an appeal to the Accident Compensation Appeal Authority has now been filed. Although the applicant diligently pursued his chosen course, he neglected to obtain an extension of the time bound stay in this Court before it lapsed. His application for recall is to belatedly extend the stay so that his collateral appeal may be pursued before the Authority.

[2] Neither the respondent nor ACC opposes the applicant's application.

[3] Where for a very special reason justice requires recall of a judgment, the Court may make such an order.⁴ Given that the applicant has pursued his remedies diligently and that failure to extend the stay would defeat his claim, we are satisfied that it is appropriate to recall our judgment in relation to the stay and to amend its terms.

[4] We now recall our 16 June 2021 judgment and reissue it with the following amendment to [7] and [8] of the final orders:⁵

[7] This Court's decision in *Austin v Roche Products (New Zealand) Ltd* is stayed until further order of this Court.

[8] Either the respondent or ACC may apply to discharge the stay on the ground that the applicant has not continued to pursue his appeal before the Accident Compensation Appeal Authority diligently or on any other ground.

Solicitors:

Tompkins Wake, Hamilton for Respondent

S Cohen-Ronen, Accident Compensation Corporation, Wellington for Intervener

³ The stay was to lapse at midday on 6 December 2021.

⁴ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.

⁵ Stay decision, above n 1 (footnotes omitted).