

[2] The interim injunction granted by Holland J in 1987 restrained the defendants (the respondents in these proceedings) from proceeding with a mortgagee sale of Mr Anderson’s farm pursuant to Property Law Act 1952 notices.⁵ The judgment recognised the possibility that another Property Law Act notice might be issued, giving Mr Anderson time to remedy the breach and which could then form the basis of a mortgagee sale of the property in the event of further default.

[3] That is precisely what occurred. Mr Anderson defaulted. The farm, which had been in his family since 1880, was sold by mortgagee sale in June 1988. Mr Anderson was adjudicated bankrupt. The defendants were liquidated and de-registered.

[4] Mr Smith appears (as he did in 2006 in the Court of Appeal) for IAG New Zealand Ltd as an interested party. His client had acquired the assets and liabilities of the defendants under a scheme of arrangement approved on 19 May 2003.

[5] The Court of Appeal noted in 2006 that “Mr Anderson was not able to point to any unlawful act of the defendants leading to the sale of his property” 18 years earlier.⁶

[6] When Mr Anderson sought, a further 16 years later, to recall that decision in 2022, the Court of Appeal said:⁷

[5] The basis of Mr Anderson’s present application is simply that he, acting for himself in 2006, failed to raise various arguments that he now says were available to him. He says these arguments would have enabled him to make a claim that NZI Bank had knowingly or unlawfully acted in breach of s 90 of the Property Law Act 1952. Mr Anderson says that, as a consequence, the subsequent sale of the mortgaged property was unlawful.

[7] It went on to conclude that:⁸

⁵ *Anderson v NZI International Acceptances Ltd* HC Dunedin CP113/87, 19 November 1987 [First HC judgment].

⁶ First CA judgment, above n 2, at [9].

⁷ Second CA judgment, above n 1, at [5].

⁸ At [6]. The Court referenced *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (HC) at 633 — affirmed by this Court in *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286, at [22]–[25]; and *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2].

A desire now, some 16 years later, to recall a judgment because of arguments available but not pursued at the time does not amount to a ‘very special reason’ requiring the Court’s judgment to be recalled.

[8] In this Court Mr Anderson wishes to advance arguments that the renewed process in 1988 was unlawful and contravened s 90 of the Property Law Act 1952. He seeks a “final judgment” recalling the 2006 decision of the Court of Appeal and:

... then further ongoing orders that my creditors be paid in full with interest under the Judicature Act 1908, my family farm returned to me as per an order under the Land Transfer Act 2017, section 16, and my family farm house ordered be rebuilt as it was prior to the fire that destroyed it in 1988.

Analysis

[9] We leave open for present purposes whether jurisdiction exists to appeal a refusal to recall.⁹ The 2022 decision of the Court of Appeal involved an orthodox application of well-settled principles relating to recall. The underlying 2006 decision involved an orthodox analysis of whether directions might be given to revive proceedings after a fundamental change of circumstances since the granting of interim injunctive relief and the elapse of 18 years during which the land had been acquired by a bona fide third party purchaser and the respondents had been liquidated in the ordinary course of a commercial restructuring. The context is fact-specific. The proposed appeal does not raise any question of general or public importance.¹⁰ The merits of the arguments advanced by the applicant are not such that we see a real risk that a substantial miscarriage may occur if the appeal is not heard.¹¹

[10] The application for leave to appeal is dismissed.

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⁹ Senior Courts Act 2016, s 68(b). See *P (SC 56/2021) v Commissioner of Inland Revenue* [2021] NZSC 51; compare *Ngahuia Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC); and *Payne v Payne* [2005] NZSC 52.

¹⁰ Section 74(2)(a).

¹¹ Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 3 NZLR 522.