

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 55/2022  
[2022] NZSC 93

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  
   N L K Stone and D A Cowan for First Respondent  
   T P Mullins, D A C Bullock and N T Sussman for Second  
   Respondent

Judgment:                      3 August 2022

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**JUDGMENT OF THE COURT**

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**A        The application for leave to appeal is dismissed.**

**B        The applicant must pay each respondent costs of \$2,500.**

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**REASONS**

**Introduction**

[1] Mr Mailley seeks leave to appeal against a judgment of Collins J of 12 May 2022 (the recall judgment).<sup>1</sup> In that judgment, Collins J dismissed an application to recall his judgment in *Mailley v Shaw* of 8 March 2022 (the substantive

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<sup>1</sup> *Mailley v Shaw* [2022] NZCA 180 (Collins J) [CA recall judgment].

judgment).<sup>2</sup> The substantive judgment declined an application to review the Deputy Registrar's decision concerning security for costs.

## **Background**

[2] In 2015, Mr Mailley and his wife filed various civil claims in connection with alleged errors in the approach of a Standards Committee dealing with complaints made against his former lawyers. A lengthy and tortuous procedural history followed, as outlined in the substantive judgment.<sup>3</sup>

## **Grounds of appeal**

[3] Mr Mailley submits that Collins J should have allowed his application for recall because the Deputy Registrar, in determining security for costs, incorrectly applied the daily recovery rate in the High Court Rules 2016 when the rate under the former High Court Rules should have applied as the proceedings were filed in 2015. He submits that the transitional provisions in the Senior Courts Act 2016, sch 5 cls 10 and 11, should apply.

## **The recall decision**

[4] Collins J held that, when the Court of Appeal (Civil) Rules were enacted in 2005, the formula for calculating security for costs in the Court of Appeal was set by reference to the daily recovery rate for category 3 proceedings in the High Court Rules. This did not preserve a particular daily recovery rate but instead would incorporate the daily recovery rate in force at the time that security for costs was set.<sup>4</sup> He said that there is no indication that sch 5 cl 11(2) of the Senior Courts Act was intended to change the Court of Appeal's approach to calculating security for costs by preserving a particular daily recovery rate instead of using the daily recovery rate in force at the time that security for costs is set.<sup>5</sup>

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<sup>2</sup> *Mailley v Shaw* [2022] NZCA 41 (Collins J) [CA substantive judgment].

<sup>3</sup> The history behind the proceedings is set out in the substantive judgment: at [2]–[9].

<sup>4</sup> CA recall judgment, above n 1, at [16].

<sup>5</sup> At [17].

## **Our assessment**

[5] This Court must not give leave to appeal unless it is satisfied that it is in the interests of justice for the Court to hear and determine the appeal.<sup>6</sup> We do not consider it would be in the interests of justice to give leave in this case. We accept that the point Mr Mailley wishes to raise may apply to other cases, although these are not likely to be numerous. We thus do not consider that the proposed appeal raises an issue of general or public importance or a matter of general commercial significance.<sup>7</sup> Nor do we see any appearance of a miscarriage of justice.<sup>8</sup> Having considered the applicant's arguments, we consider that the appeal has insufficient prospect of success to warrant the granting of leave.<sup>9</sup>

## **Result**

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

[7] The applicant must pay each respondent costs of \$2,500.

Solicitors:

Ord Legal, Wellington for First Respondent

Lee Salmon Long, Auckland for Second Respondent

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<sup>6</sup> Senior Courts Act 2016, s 74(1).

<sup>7</sup> Section 74(2)(a) and (c).

<sup>8</sup> Section 74(2)(b).

<sup>9</sup> *Prime Commercial Ltd v Wool Board Disestablishment Company Ltd* [2007] NZSC 9, (2007) 18 PRNZ 424 at [2].