

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 5/2020  
[2024] NZSC 124

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

Court: Glazebrook, O'Regan, Ellen France and Williams JJ  
Counsel: G J Thwaite for Appellant  
J A MacGillivray for Respondent  
Judgment: 25 September 2024

---

JUDGMENT OF THE COURT

---

- A** The stay ordered in *Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 62 is lifted.
- B** The appeal is dismissed.
- C** There is no order as to costs.
- 

REASONS

[1] In 2020, Mr Austin was granted leave to appeal. The approved question was whether the Court of Appeal was correct to strike out his claim for compensatory damages because his injuries were not an ordinary consequence of consuming a drug, Roaccutane.<sup>1</sup>

---

<sup>1</sup> *Austin v Roche Products (New Zealand) Ltd* [2020] NZSC 49 (Glazebrook, Ellen France and Williams JJ) at [16].

[2] In its judgment on the appeal, this Court held that s 133(5) of the Accident Compensation Act 2001 applied and that this Court has no jurisdiction. Mr Austin's prior claim to coverage prevented him from bringing the proceedings.<sup>2</sup> This Court said that it would dismiss Mr Austin's appeal one month from the date of the judgment unless he made an application under s 135 of the Accident Compensation Act 2001 to reverse his grant of cover, together with an application to this Court for a stay of this proceeding pending completion of that process.<sup>3</sup>

[3] Mr Austin made an application under s 135 and also applied for a stay to this Court, which was granted.<sup>4</sup>

[4] Mr Austin has been unsuccessful in his application to reverse coverage and accepts the matter is now at an end.<sup>5</sup> He says that the stay can now be lifted, the appeal dismissed and the security for costs returned, as no costs were ordered in the substantive judgment. Mr Austin also seeks return of the filing fee on the basis that this Court did not have jurisdiction and asks for an order that the matter be returned to the High Court for further conduct of the action.

[5] The respondent agrees the stay should be lifted and the appeal dismissed with no order for costs. It says, however, that the dismissal of the appeal does not affect Mr Austin's claim for exemplary damages but it is for the parties to pursue the resolution of that claim in the High Court. It says it is incorrect for Mr Austin to say this Court lacked jurisdiction.

[6] We agree the appeal should be dismissed with no order for costs and that it is appropriate to refund security for costs. We agree with the respondent that it is now for the parties to pursue the matter in the High Court.<sup>6</sup> As Mr Austin's application for

---

<sup>2</sup> *Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 30, [2021] 1 NZLR 294 (Glazebrook, O'Regan, Ellen France, Williams and Arnold JJ) at [35].

<sup>3</sup> At [37]

<sup>4</sup> *Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 62 (Glazebrook, O'Regan, Ellen France, Williams and Arnold JJ).

<sup>5</sup> *Austin v Accident Compensation Corporation* [2023] NZACC 59; and *Austin v Accident Compensation Corporation* [2024] NZHC 1985.

<sup>6</sup> Mr Austin filed a memorandum in reply on 10 September 2024 without seeking leave to do so. We nevertheless have considered the memorandum but do not consider it necessitates any change to this judgment or the judgment on the substantive appeal. It will be for the High Court to determine the effect of those judgments in relation to the proceedings before it.

leave to appeal was granted and the appeal was fully argued, we do not accept it is appropriate to refund the filing fee.

## **Result**

[7] The stay ordered in *Austin v Roche Products (New Zealand) Ltd* [2021] NZSC 62 is lifted.

[8] The appeal is dismissed.<sup>7</sup>

[9] There is no order as to costs.

Solicitors:  
Tompkins Wake, Hamilton for Respondent

---

<sup>7</sup> We decide this as a panel of four under s 84 of the Senior Courts Act 2016, as Arnold J is not available.