

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 74/2022
[2024] NZSC 16

BETWEEN HARRY MEMELINK
Applicant

AND COLLINS & MAY LAW
Respondent

Court: Williams, Kós and O'Regan JJ

Counsel: Applicant in person
H M Twomey for Respondent

Judgment: 23 February 2024

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] This is an application for recall of the judgment of this Court delivered on 10 November 2022 declining to extend time to apply for leave to appeal.¹ The respondent abides the Court's decision.

[2] The underlying proceeding is a bankruptcy order made in the High Court in August 2018.² The application for extension of time to appeal that order was made a year out of time to the Court of Appeal. That Court declined extension.³ The applicant then sought extension of time to appeal to this Court. That application was more than two years out of time.

¹ *Memelink v Collins & May Law* [2022] NZSC 130 (O'Regan, Williams and Kós JJ) [SC decision].

² *Re Memelink* HC Wellington CIV-2018-485-363, 28 August 2018 (Associate Judge Johnston).

³ *Memelink v Collins & May Law* [2020] NZCA 62 (Cooper and Wild JJ).

[3] In declining extension of time we noted that the Court of Appeal applied principles set out in this Court's decision in *Almond v Read*.⁴ We also recorded that the Associate Judge had found that, even on the applicant's own analysis, his assets were exceeded by his liabilities by more than \$5.5 million.⁵

[4] In applying for recall of that judgment (more than a year after its delivery) the applicant makes a number of complaints against his former solicitor (and one of his creditors), Quentin Haines. It may be noted that Mr Haines has since been found guilty by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal of seven charges of misconduct and two charges of unsatisfactory conduct under ss 7 and 12 of the Lawyers and Conveyancers Act 2006, a finding since upheld by the High Court.⁶

[5] Other complaints are made as well, and the application is not entirely coherent. However, the gist of it is this:

I say that Haines defective and illegal creditors proposal and his fraud \$1M + GST invoice were influential in in Associate Judge Johnston's decision to adjudicate me bankrupt and this needs to be taken into consideration with this proceeding and the recall of judgement.

[6] Recall is an exceptional procedure; recall apart, a decision of this Court is, and must be, final.⁷ A judgment will only be recalled in three exceptional circumstances, being those identified in *Horowhenua County v Nash (No 2)*.⁸ The third and sole potentially appropriate circumstance in this case is where for some very special reason justice requires that the judgment be recalled, such as a procedural or substantive error that would result in a miscarriage of justice.⁹

[7] Putting to one side the incoherence of the application and the informal submission of evidence associated with it, the difficulty with the present application is that even if Mr Haines' \$1.15 million invoice is discounted, on his own evidence

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

⁵ SC decision, above n 1, at [3].

⁶ *Haines v National Standards Committee (No 1)* [2023] NZHC 3039.

⁷ *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [20].

⁸ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; as applied by this Court in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

⁹ *Uhrle*, above n 7, at [25]–[27].

the applicant's liabilities (including those to the respondent) exceeded his assets (which were just \$6,000) by over \$4.35 million (including secured creditors exceeding \$2.6 million). It is not therefore apparent that a procedural or substantive error has occurred that would result in a miscarriage of justice in allowing the bankruptcy order, made more than five years ago now, to stand.

Result

[8] The application for recall is dismissed.

[9] As no substantial response was required of the respondent, we make no order for costs.

Solicitors:
Robertsons, Auckland for Respondent