

IN THE SUPREME COURT OF NEW ZEALAND

SC 105/2017
[2017] NZSC 177

BETWEEN GARY OWEN BURGESS
Applicant

AND MALLEY & CO
Respondent

Court: Elias CJ, Glazebrook and O'Regan JJ

Counsel: Applicant in person
A J Gaborieau for Respondent

Judgment: 27 November 2017

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$2,500 to the respondent.**
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REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal.¹ In that judgment, the Court of Appeal dismissed the applicant's appeal against a decision of Gendall J in the High Court, in which he ordered the applicant to pay the respondent outstanding fees and disbursements for legal services, together with interest.² Gendall J also dismissed the applicant's counterclaim alleging negligence and other failings by the respondent. The Court of Appeal awarded increased costs against Mr Burgess because he had "contributed unnecessarily and

¹ *Burgess v Malley & Co* [2017] NZCA 401 (French, Simon France and Toogood JJ) [*Burgess* (CA)].

² *Malley & Co v Burgess* [2016] NZHC 907.

unreasonably to the cost of the appeal by raising a multiplicity of arguments that were without merit”.³

[2] This is the third application for leave to appeal made by the applicant in relation to his dispute with the respondent.⁴

[3] The applicant wishes to contest on appeal a number of factual findings made in the Courts below, which he argues are contrary to the evidence, or are based on a rejection of his evidence that ought to have been accepted. He also wishes to argue that the finding that the lawyer who acted for him in relationship property proceedings, Mr Tait of Malley & Co, had not done or omitted to do anything that substantiated an action against him or the firm for negligence or otherwise was based on errors of both fact and law. In addition, he seeks to raise matters relating to the calculation of the amount he owed the respondent.

[4] The applicant’s defence to the claim for fees and his counterclaim against the respondent has been the subject of detailed consideration in both the High Court and the Court of Appeal. All of the points the applicant wishes to raise are essentially relitigation of matters decided in the Courts below and are specific to the facts of the case. No point of general or public importance arises. The material before the Court does not give any reason to consider that a miscarriage of justice might arise if leave is not given. In those circumstances we dismiss the application for leave to appeal.

[5] The applicant must pay costs to the respondent of \$2,500.

Solicitors:
Parker Cowan, Queenstown for Respondent

³ *Burgess (CA)*, above n 1, at [142].

⁴ The other two were *Burgess v Malley & Co* [2017] NZSC 9 and *Burgess v Malley & Co* [2017] NZSC 38.