

IN THE SUPREME COURT OF NEW ZEALAND

SC 3/2017
[2017] NZSC 63

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND LINDA GALLAGHER
First Respondent

MALCOLM EDWARD RABSON AS
TRUSTEE OF THE MALCOLM
RABSON FAMILY TRUST
Second Respondent

WAYNE SEYMOUR CHAPMAN AS
TRUSTEE OF THE
GALLAGHER-RABSON FAMILY
TRUST
Third Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person
N Levy for First Respondent
S A Barker for Third Respondent

Judgment: 4 May 2017

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] The applicant seeks a recall of the judgment of this Court delivered on 5 April 2017 refusing him leave to appeal against a judgment of the Court of Appeal.¹

¹ *Rabson v Gallagher* [2017] NZSC 44.

[2] The bases upon which recall is sought consist of (a) a complaint that in the judgment under challenge, the Court of Appeal’s “refusal to clarify” its orders was unreasoned; (b) the picking up of a remark made in the leave judgment of this Court that there had been no explicit explanation of the reasons for the structure of the original orders; and (c) that it is “an affront to natural justice” for this Court to decline leave for an appeal which would clarify those orders.

[3] The Court of Appeal did, in fact, express its view as to the scope of the reservation of leave. The leave judgment provided what this Court regarded as a plausible explanation for the structure of the original orders. And, as the judgment makes clear, the Court was satisfied that the applicant could not credibly maintain that he had suffered a miscarriage of justice; this irrespective of the approach taken to the extent of the reservation of leave.

[4] The recall application is accordingly declined.

Solicitors:

Mary Jeffcoat, Wellington for First Respondent
Buddle Finlay, Wellington for Third Respondent