

IN THE SUPREME COURT OF NEW ZEALAND

SC 130/2016
[2017] NZSC 9

BETWEEN GARY OWEN BURGESS
Applicant
AND MALLEY & CO
Respondents

Court: William Young, Glazebrook and Arnold JJ
Counsel: Applicant in person
A J Gaborieau for Respondents
Judgment: 16 February 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 respondents.
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REASONS

[1] The applicant, Mr Burgess, has appealed to the Court of Appeal against a decision of Gendall J in the High Court, in which he ordered Mr Burgess to pay the respondents, Malley & Co, outstanding fees and disbursements for legal services, together with interest.¹ In the same judgment, Gendall J dismissed a number of claims brought by Mr Burgess against Malley & Co alleging negligence and other failings by the firm.

[2] In conjunction with filing the appeal in the Court of Appeal, Mr Burgess applied for a dispensation from the requirement to pay security for costs; for their part, Malley & Co applied for an increased amount by way of security. The

¹ *Malley & Co v Burgess* [2016] NZHC 907.

Deputy-Registrar declined to waive security and increased the amount payable from the usual \$6,600 to \$10,000.

[3] Mr Burgess then applied to have these decisions reviewed by a Judge. Miller J upheld the Deputy-Registrar's decision not to waive security but granted the application to review the increased amount, reducing it to \$6,600.² Mr Burgess now seeks leave to appeal to this Court against Miller J's decision to uphold the Deputy-Registrar's decision to refuse to waive security.

[4] These proceedings arise from a long-running relationship property dispute between Mr Burgess and his former partner. Malley & Co represented Mr Burgess in the relationship property proceedings.

[5] It is not suggested that the proposed appeal raises any issue of general or public importance. Rather, Mr Burgess argues that Miller J erred by misapplying the principles articulated by this Court in *Reekie v Attorney-General*³ and by incorrectly assessing the merits of his appeal against Gendall J's decision.

[6] As to the first point, Miller J's decision was an orthodox application of the principles set out in *Reekie*. We are not persuaded that the principles have, or may have been, misapplied.

[7] As to the second point, Miller J concluded that the appeal was, in some respects, hopeless and in others "not strong". Again, nothing has been raised to cast doubt on this preliminary evaluation.

[8] In these circumstances, we dismiss the application for leave to appeal. The applicant must pay costs of \$2,500 to the respondents.⁴

Solicitors:
Parker Cowan, Queenstown for Respondents

² *Burgess v Malley & Co* [2016] NZCA 484.

³ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

⁴ Since these reasons were prepared, Mr Burgess has filed a memorandum saying that he is now in a position to pay most of the amount that he is required to pay by way of security for costs. That is an issue for the Court of Appeal.