

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 86/2024
[2024] NZSC 169

BETWEEN GRANT NICOLSON
Applicant

AND ISAAC LOWTHER
First Respondent

STEVEN KHOV
Second Respondent

KIERAN JONES
Third Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: Applicant in person
K D Puddle and N F Duncan for Respondents

Judgment: 6 December 2024

JUDGMENT OF THE COURT

A The application for recall of this Court’s judgment of 8 October 2024 (*Nicolson v Lowther* [2024] NZSC 135) is dismissed.

B There is no order as to costs.

REASONS

[1] The applicant, Mr Nicolson, seeks a recall of this Court’s judgment declining leave to appeal on the basis that the costs award of \$2,500 in favour of the respondents made in the judgment should be quashed.¹

¹ *Nicolson v Lowther* [2024] NZSC 135 (Ellen France, Williams and Kós JJ) [SC judgment].

[2] As the Court noted in the judgment declining leave, the leave application concerned a decision of the Court of Appeal.² The Court of Appeal dismissed Mr Nicolson’s application for a review of a decision by the Deputy Registrar of the Court of Appeal not to accept for filing Mr Nicolson’s application for leave to appeal to that Court from a decision of the High Court. As this Court noted:³

In the High Court decision, it had been determined that it was neither appropriate nor in the interests of justice to proceed on a without notice basis under s 250 of the Companies Act 1993 to terminate the liquidation of a company with which Mr Nicolson is associated.

[3] In declining leave, this Court considered the proposed appeal had insufficient prospects of success to warrant granting leave. The matters Mr Nicolson sought to advance did not address the jurisdictional problem with the application filed in the Court of Appeal.

[4] Mr Nicolson says the costs order should be quashed because the respondents played no part in the Court of Appeal proceedings and “were invited” by this Court to provide an opinion “pertaining to a point of law” which they did not do and which “was irrelevant to the case on appeal”. Amongst other matters, he says that as a result his rights under the New Zealand Bill of Rights Act 1990 have been breached.

[5] The second and third respondents were appointed as joint and several liquidators of the company to which Mr Nicolson’s application under s 250 of the Companies Act 1993 relates.⁴ They have an interest in the proceedings as is reflected by the fact they are named respondents. They incurred the cost of filing submissions which were directed to the criteria applicable to the application for leave to appeal. That leave application having been dismissed, they were entitled to an award of costs in the usual way.

[6] In these circumstances, there is no basis for the Court to recall its judgment.⁵

² *Nicolson v Lowther* [2024] NZCA 164 (Wylie J) [CA judgment].

³ SC judgment, above n 1, at [1].

⁴ The Court of Appeal said that it appeared that the first respondent “may be an employee of the second and third respondents’ firm” and the Court inferred “that he may have assisted ... in .. various tasks in relation to the liquidation”: CA judgment, above n 2, at [6].

⁵ See generally *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76; and *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

[7] The application for recall of this Court's judgment of 8 October 2024 (*Nicolson v Lowther* [2024] NZSC 135) is dismissed.

[8] The respondents filed no submissions on the recall application so there is no order as to costs.

Solicitors:
TWA Legal Ltd, Auckland for Respondents