

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 92/2021
[2024] NZSC 74

BETWEEN MARK ANTHONY WHITTINGTON
Applicant

AND UDC FINANCE LIMITED
Respondent

Court: Ellen France and Williams JJ

Counsel: Applicant in person
S C D A Gollin and S L Michelson for Respondent

Judgment: 3 July 2024

JUDGMENT OF THE COURT

- A The application for recall of this Court’s judgment of 27 August 2021 (*Whittington v UDC Finance Ltd* [2021] NZSC 106) is dismissed.**
- B The application for stay of the High Court’s order of 25 March 2021 (*UDC Finance Ltd v Whittington* [2021] NZHC 627) is dismissed.**
- C The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicant seeks recall of our judgment of 27 August 2021 declining to grant a stay of his bankruptcy adjudication.¹ In addition, he seeks a stay of the order of 25 March 2021 in the High Court adjudicating him bankrupt.²

¹ *Whittington v UDC Finance Ltd* [2021] NZSC 106 (William Young, Ellen France and Williams JJ).

² *UDC Finance Ltd v Whittington* [2021] NZHC 627 (Associate Judge Lester).

[2] This is the second application for recall of the judgment of 27 August 2021, an earlier application having been dismissed on 10 September 2021.³ Nothing further has been advanced which would warrant a recall of our decision not to grant a stay. The applicant simply seeks to relitigate the Court's earlier decisions.⁴ Nor is anything put forward to show that it is in the interests of justice for the Court to address the application for a stay of the High Court order.⁵ The delay in making the present applications is significant, as the respondent says, and the application would have the Court largely reprise concerns expressed previously about processes adopted in the Courts below.

Result

[3] The application for recall is dismissed.

[4] The application for a stay of the High Court order is also dismissed.

[5] The respondent seeks costs on an indemnity basis for having been put to unnecessary expense in responding to an application it says is without merit. We consider the usual award of costs of \$2,500 for an application such as the present will suffice in the circumstances. The applicant must pay the respondent costs of \$2,500.

Solicitors:
MinterEllisonRuddWatts, Auckland for Respondent

³ *Whittington v UDC Finance Ltd* [2021] NZSC 113 (William Young, Ellen France and Williams JJ).

⁴ See *FMV v TZB* [2022] NZSC 26 at [3].

⁵ We assume, for these purposes, that the application for a stay of the High Court order comes within r 30 of the Supreme Court Rules 2004: see *Whittington v UDC Finance Ltd*, above n 1, at [3].