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IN THE COURT OF APPEAL OF NEW ZEALAND

**CA669/2013
[2015] NZCA 629**

BETWEEN NEW ZEALAND ASSOCIATION OF
 COUNSELLORS INCORPORATED
 Appellant

AND PETER GERARD STOCKMAN
 Respondent

Court: Randerson, French and Winkelmann JJ

Counsel: C Heaton for Appellant
 Respondent in person

Judgment: 18 December 2015 at 4 pm
(On the papers)

JUDGMENT OF THE COURT

The application for recall is declined.

REASONS OF THE COURT

(Given by Winkelmann J)

Introduction

[1] The New Zealand Association of Counsellors Incorporated (the Association) had appealed a decision of Peters J referring a complaint by the respondent, Mr Stockman, back to the Association for further consideration on the grounds that the Association had acted in a procedurally unfair manner by excluding email evidence.¹ The Association abandoned its appeal on 21 May 2015. Mr Stockman

¹ *Stockman v New Zealand Association of Counsellors Inc* [2013] NZHC 2267.

then applied for an order for indemnity costs against the Association and sought leave to adduce further evidence to support that claim for costs. In the alternative he sought an award of costs for a standard appeal. We declined the applications for indemnity costs and to adduce further evidence but awarded Mr Stockman costs in the sum of \$4,460.²

[2] Mr Stockman now applies for a recall of that judgment.

Alleged basis for recall

[3] The jurisdiction to recall judgments was discussed in *Horowhenua County v Nash (No.2)*.³ The Court there described three categories in which a judgment not perfected may be recalled:⁴

... first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[4] The last is the category into which Mr Stockman submits his case falls. We note that this Court has said that category's scope is narrow so that cases appropriate for recall on that basis are likely to be rare.⁵ In *Faloon v Commissioner of Inland Revenue* it was said of the third category:⁶

[13] While the third category is not defined with particularity in the judgments, it is quite clear that the discretion to recall must be exercised with circumspection, and it must not in any way be seen as a substitute for appeal. In particular there are some things that it can be said the power to recall does not extend to. It does not extend to a challenge of any substantive findings of fact and law in the judgment. It does not extend to a party recasting arguments previously given, and re-presenting them in a new form. It does not extend to putting forward further arguments, that could have been raised at the earlier hearing but were not.

² *New Zealand Association of Counsellors Inc v Stockman* [2015] NZCA 542 [Indemnity costs judgment].

³ *Horowhenua County v Nash (No. 2)* [1968] NZLR 632 (SC).

⁴ At 633.

⁵ *Unison Networks Ltd v Commerce Commission* [2007] NZCA 49 at [34].

⁶ *Faloon v Commissioner of Inland Revenue* (2006) 22 NZTC 19,832 (HC).

[5] Mr Stockman asks that the judgment be recalled because, he says, this Court has not been impartial in its consideration of his applications for indemnity costs and to adduce further evidence. He postulates that this lack of even-handedness flows from the fact that he is a litigant in person. He claims that there is the following evidence of a lack of impartiality:

- (a) the Court accepted as true incorrect assertions made by counsel for the appellant while dismissing accurate assertions made by Mr Stockman;
- (b) the Court has not been even-handed in determining his applications;
- (c) the Court has failed to provide adequate reasons for its determinations; and
- (d) the Court has addressed some of the heads of arguments put forward in support of his application for indemnity costs but then without explanation ignored other heads of argument.

Analysis

[6] Mr Stockman's arguments do not make out a case that justice requires that the judgment be recalled.

[7] Mr Stockman says that this Court incorrectly recorded facts in the costs judgment. The factual errors he alleges are inconsequential but in any case we do not accept there are the factual errors he claims. For example, he says the Court was wrong to say he had unsuccessfully sought leave to appeal an earlier direction (made prior to the abandonment of the Association's appeal) that two appeals be heard together to the Supreme Court, and that this mistake is evidence that the Court took at face value an assertion by the appellant and so were led astray. But in its decision declining Mr Stockman's application for leave to appeal the Supreme Court records:⁷

[1] The applicant, Mr Stockman, seeks leave to appeal against a judgment of French J in the Court of Appeal declining to dispense with

⁷ *Stockman v New Zealand Association of Counsellors Inc* [2014] NZSC 53 (footnotes omitted).

security for costs (on review of a decision of the Registrar) for an appeal to the Court of Appeal. The appeal is brought in the Court of Appeal against a determination of the High Court that Mr Stockman was not entitled to costs on a successful application for judicial review because he was self-represented. Mr Stockman also seeks leave to appeal from an order made in the Court of Appeal that his appeal concerning costs be heard together with an appeal by the respondent against the substantive determination in the High Court in the judicial review proceedings, by which the respondent Association's decision to exclude evidence filed in support of Mr Stockman's complaint to it was set aside.

[8] Mr Stockman also says at various points that the Court did not provide adequate reasons for dismissing his arguments. That is a ground for appeal, but it is not a ground for recall.

[9] Mr Stockman complains that the Court failed to address every argument he made, or that it misunderstood his arguments. To the extent he complains the judgment portrays a misunderstanding of his arguments that is properly a matter for appeal rather than recall.⁸ As to his complaint that not all his arguments were addressed, the Court dealt with the points he raised that were considered relevant to the application for costs. A Court is not obliged when giving its reasons to discuss every aspect of argument.⁹

[10] Finally, we reject Mr Stockman's allegation of lack of even-handedness. All matters raised by him in support of his applications for indemnity costs and to adduce further evidence were considered.

Conclusion

[11] To conclude, Mr Stockman has not identified any matter which justifies the Court recalling its judgment.

Result

[12] The application for recall is therefore declined.

Solicitors:
Morrison Kent, Wellington for Appellant

⁸ *Unison Networks Ltd v Commerce Commission* above n 5, at [40].

⁹ *R v Nakhla (No. 2)* [1974] 1 NZLR 453 (CA) at 456.