

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA572/2017
[2020] NZCA 31**

BETWEEN

DERMOT NOTTINGHAM
Applicant

AND

MALTESE CAT LIMITED
First Respondent

CLYDE ALEXANDER MacLEAN
Second Respondent

ELIZABETH MAY CURRIE
Third Respondent

JOHN DOE AND/OR JANE DOE
Fourth Respondent

Court:

Courtney, Brewer and Gendall JJ

Counsel:

Applicant in Person
D Connor and K Chow for First, Second and Third Respondents

Judgment:

28 February 2020 at 9.30 am

(On the papers)

JUDGMENT OF THE COURT

- A** **The application for recall is dismissed.**
- B** **The respondents shall have costs on a band A basis.**
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REASONS OF THE COURT

(Given by Courtney J)

NOTTINGHAM v MALTESE CAT LIMITED [2020] NZCA 31 [28 February 2020]

[1] Mr Nottingham applied unsuccessfully in the High Court to strike out the respondents' claim on the basis that it is time-barred.¹ This Court dismissed Mr Nottingham's appeal against that decision.² Mr Nottingham was ordered to pay one set of costs for a standard appeal on a band A basis with usual disbursements. He has now applied for a recall of the judgment and a rehearing of the appeal on various issues.

[2] Rule 8A of the Court of Appeal (Civil) Rules 2005 provides that the Court may recall or reopen a judgment. However, the circumstances in which it will do so are very limited.³ The criteria are those set out in *Horowhenua County v Nash (No 2)*:⁴

Generally speaking, a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories in which a judgment not perfected may be recalled – 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.

[3] Mr Nottingham identifies five grounds for his application. They can be broadly summarised as follows:

(a) the costs awarded are punitive and unfair in the circumstances;

¹ *Maltese Cat Ltd v John Doe and/or Jane Doe* [2017] NZHC 1728, (2017) 24 PRNZ 254 at [22].

² *Nottingham v Maltese Cat Limited* [2019] NZCA 641.

³ *Erwood v Maxted* [2010] NZCA 93, [2010] 20 PRNZ 466 at [23].

⁴ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 at 633 (SC).

- (b) in considering costs the Court failed to take into account allegations of perjury by the respondents and the merits of Mr Nottingham's substantive argument;
- (c) there were errors of law by the Court and bias by one of the panel;
- (d) there is a history of this Court making decisions adverse to Mr Nottingham; and
- (e) Mr Nottingham's rights under the New Zealand Bill of Rights Act 1990, the International Covenant on Civil and Political Rights and the Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms have not been observed.

[4] In a subsequent memorandum dated 17 February 2020 filed in response to the respondents' memorandum Mr Nottingham reframed the grounds slightly but the essential complaints remain as set out above.

[5] It is evident from Mr Nottingham's memorandum that he wishes to reargue a number of matters that were argued at the hearing of the appeal and, moreover, seeks to have this Court take further steps to investigate factual matters in issue between the parties. None of the matters Mr Nottingham raises are within the category of cases appropriate for recall. Mr Nottingham's proper course is to pursue the application for leave to appeal to the Supreme Court that he filed prior to making the present application.

[6] The respondents have sought costs on a band A basis in respect of this application. Mr Nottingham did not address the issue of costs in his memorandum. We grant costs on the basis sought.

Solicitors:

DB Law, Auckland for First, Second and Third Respondents