IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2023-485-48
[2024] NZHC 827

BETWEEN	GAUTAM JINDAL Plaintiff
AND	IMRAN MOHAMMED KAMAL First Defendant
	LIQUIDATION MANAGEMENT LIMITED Second Defendant
	KEVIN JOHN DAVIES Third Defendant
	PRINCIPLE INSOLVENCY GP LIMITED Fourth Defendant

Hearing:	13 March 2024
Appearances:	Plaintiff In Person B Mathers for First and Second Defendants F Geiringer for Third and Fourth Defendants
Judgment:	18 April 2024

JUDGMENT OF ASSOCIATE JUDGE SKELTON

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[1] In this proceeding there are four defendants but two defendant groups (the first and second defendants are one group, and the third and fourth defendants are the other group). Both defendant groups applied for security for costs. On 9 October 2023 (the First Judgment), I ordered that the plaintiff was to provide security for the defendants' costs in the total sum of $60,000 on account of the costs of all defendant applicants.[1]

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1 *Jindal v Kamal* [2023] NZHC 2820].

[2] As the defendant groups were successful, I also awarded costs in favour of the defendants on a 2B basis, together with disbursements as fixed by the Registrar.[2]

[3] On 17 October 2023, counsel for the defendant groups filed a joint memorandum setting out a schedule of costs allocating costs for each defendant group. Counsel for the defendant groups advised that the plaintiff did not agree with the schedule but had not provided any detail concerning what part of it he disputed.

[4] In a minute dated 20 October 2023, I directed that the plaintiff had until 1.00 pm on Tuesday 24 October 2023 to file and serve any memorandum in response to the joint memorandum of counsel for the defendant groups dated 17 October 2023.

[5] At 12.36 pm on Tuesday 24 October 2023 the plaintiff filed a memorandum regarding costs. Although the plaintiff's memorandum did not refer to r 14.8(2) of the High Court Rules 2016, the plaintiff was essentially seeking to reverse the costs order made on 9 October 2023 under that rule. The plaintiff contended that:

(a) the costs position in the substantive judgment should be reversed and that the plaintiff should be awarded 2B costs with a 25 per cent uplift because the plaintiff made a Calderbank offer to the defendants on 26 June 2023 and the defendants acted unreasonably in not accepting the offer; and

(b) the defendants also acted unreasonably in not indicating the amount of the security for costs sought at an early stage and especially once Ellis J requested that the applicants were to quantify the amount of security for costs sought at a telephone conference on 12 June 2023.

[6] The plaintiff's memorandum dated 24 October 2023 did not raise any issue with regard to the defendants' calculation of their costs and disbursements including that the defendants' schedule allocated costs to each defendant group. The plaintiff did not raise any issue with regard to r 14.15 of the High Court Rules.

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2 At [95].

[7] In a further judgment dated 25 October 2023 (the Second Judgment),[3] I found that the defendants' rejection of the plaintiff's Calderbank offer did not mean that the costs award should be reversed. This was because the Calderbank offer was for the total sum of $30,000 to be paid as security for costs for all defendants. However, the global order for security for costs obtained by the applicants was twice the value of the plaintiff's offer.

[8] I found that the defendants did not act unreasonably in not accepting the Calderbank offer and in not indicating the amount of security for costs sought at an early stage. Regarding the first point, I found that the plaintiff's offer was low given that there are two defendant groups in this proceeding, and the offer did not include payment of the defendants' costs of the security for costs applications up to the date of the offer. Regarding the second point, I found that it was not apparent from the minute of Ellis J dated 12 June 2023 that there was any request or direction that the applicants were to quantify the amount of security for costs sought. In any event, I found that the defendants did subsequently quantify the amounts of security sought in their submissions nearly two weeks in advance of the hearing.

[9] I found that the defendants' calculation of costs and disbursements in their costs schedule (which allocated costs to each defendant group) appeared to be in accordance with the High Court Rules and reasonable. I noted that the plaintiff had not raised any issues with the defendants' calculation of their costs and disbursements.

[10] Subsequently, on 14 November 2023, the plaintiff filed an omnibus application seeking reversal, discharge, or variation of the Second Judgment, or that the Second Judgment be recalled, or alternatively, seeking leave to appeal the Second Judgment. The issues to be determined arising out of that application are:

(a) should the Second Judgment be reversed, discharged or varied under rr 14.8(2) and/or 7.49 of the High Court Rules;

(b) should the Second Judgment be recalled; and/or

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3 *Jindal v Kamal* [2023] NZHC 2990].

(c) alternatively, should leave be granted to appeal the Second Judgment pursuant to s 56(3) of the Senior Courts Act 2016.

Application under rr 14.8(2) and/or 7.49

[11] Rule 14.8(2) provides that:

> (2) Despite subclause (1), the court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.

[12] Rule 7.49(1) and (6) provides that:

> (1) A party affected by an interlocutory order (whether made on a Judge's own initiative or on an interlocutory application) or by a decision given on an interlocutory application may, instead of appealing against the order or decision, apply to the court to vary or rescind the order or decision, if that party considers that the order or decision is wrong.
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> …
>
> (6) The Judge may,—
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> (a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or
>
> (b) …

[13] In *Palmerston North City Council v Hardiway Enterprises Ltd (struck off)*,[4] the High Court recognised that r 14.8(2) tends to be used in three circumstances:

(a) mostly, after the successful appeal of an interlocutory decision;

(b) where the position regarding costs has not been mentioned or had been incorrectly stated; and

(c) where the Court lacked information when making the costs award.

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4 *Palmerston North City Council v Hardiway Enterprises Ltd (struck off)* [2018] NZHC 3005 at [6]–[8]. The analysis in *Hardiway Enterprises* was cited with approval in *Rock Solid Holdings Ltd v Simmonds* [2021] NZHC 2892 at [9].

[14] In *Hardiway Enterprises*, Williams J noted that:[5]

> I do not consider r 14.8(2) to be a procedure whereby parties against whom costs are awarded can simply come back for another "bite" at the argument. Finality is important.

[15] In *Lowe v Auckland Family Court*, the Court noted the limited guidance available regarding the application of r 14.8(2) and therefore drew from the principles developed in relation to r 7.49.[6] The Court noted that revisiting a decision is generally only appropriate:[7]

(a) when there was not full argument on the first hearing;

(b) if some relevant point of evidence was overlooked at the original hearing;

(c) when there has been a material change of circumstances; or

(d) some other special circumstance has arisen.

[16] *Sim's Court Practice* states as follows regarding the two rules:[8]

> Rule 14.8(2) contains a close analogue of r 7.49 for costs orders. It provides that "the court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made." The phrase "if satisfied … that the … order should not have been made" is considered to mean the same as "if satisfied that the order or decision is wrong" in r 7.49(6).

[17] I now consider the grounds put forward by the plaintiff in support of his application for reversal, discharge or variation of the Second Judgment.

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5 *Palmerston North City Council v Hardiway Enterprises Ltd (struck off)*, above n 4, at [9].
6 *Lowe v Auckland Family Court* [2017] NZHC 1303 at [5].
7 At [5]–[7]. This analysis was cited with approval in *Fang v Ministry of Business, Innovation and Employment* [2017] NZHC 2663 at [29].
8 Laura O'Gorman (ed) *Sim's Court Practice* (looseleaf ed, LexisNexis) at [HCR 7.49.9].

The Calderbank offer was made separately to each defendant group

[18] This ground appears to be a rerun of the argument raised by the plaintiff when he sought reversal of the costs decision made in the First Judgment. In the words of Williams J, it is another "bite" at the argument.

[19] The plaintiff contends that the Calderbank offer made by him on 26 June 2023 was made separately to each defendant group; a total offer of $60,000. He submits that because both defendant groups rejected the offer, they failed to achieve a better outcome than the result of their application for security for costs.

[20] Alternatively, the plaintiff puts forward a scenario based on an assumption that the Calderbank offer was limited to a total of $30,000. The third and fourth defendants rejected the offer first on 4 July 2023 and the first and second defendants rejected the offer (for the same reasons as the third and fourth defendants) an hour and a half later. The plaintiff submits that because the third and fourth defendants rejected the offer first, the entire offer of $30,000 became available to the first and second defendants. He submits that the first and second defendants then acted unreasonably in rejecting the offer.

[21] I have reviewed the Calderbank offer again. I remain of the view that the Calderbank offer was made to the defendants collectively for the total sum of $30,000. The offer dated 26 June 2023 was sent by email. The email was addressed to the solicitors and counsel for both defendant groups. The plaintiff stated that "…I would've expected the defendants to provide some indication of what amount they seek and how the staging of security is proposed" and "…I make the following proposal to resolve the issue of security for costs". The plaintiff stated that he was willing to deposit $30,000 into Court in three tranches of $10,000 each. The offer to deposit $30,000 as security was part of a wider proposal interweaving proposed timetabling directions for filing of the defendants' amended statements of defence and filing and hearing of the plaintiff's interlocutory applications. The plaintiff proposed that "[b]oth defendants" would file and serve their amended statements of defence within five days of the first tranche being deposited and that, after the first tranche was

paid, “all parties” would file a joint memorandum requesting that a certain date would be reserved for hearing of the plaintiff’s interlocutory applications, if required.

[22] It is clear that the Calderbank offer was made to the defendants collectively and not on the basis that it could be accepted by one defendant group. The offer was for the total sum of $30,000 security for both defendant groups, and payment of the first tranche of $10,000 was interwoven with timetabling involving both defendant groups.

[23] This ground does not provide any basis for reversal, discharge or variation of the Second Judgment.

Quantum of security for costs sought

[24] This is also another “bite” at an argument put forward by the plaintiff when he sought reversal of the costs decision made in the First Judgment.

[25] The plaintiff submits that at the telephone conference on 12 June 2023, Ellis J requested or directed that the applicants for security for costs (being the two defendant groups) were to quantify the amount of security for costs sought. The plaintiff submits that the defendants failed to give any indication of the amount sought even after this direction given by Ellis J, and that this should lead to a reversal of the Second Judgment.

[26] The plaintiff submits that I was wrong, in rejecting this argument the first time, to focus on there being no direction in Ellis J’s minute dated 12 June 2023. The plaintiff submits that the direction was given orally. However, if Ellis J intended to make a request or a direction, then it seems to me that it would have been recorded in the minute.

[27] Mr Geiringer submits that Ellis J did not direct the defendants to put forward a specific quantum of security sought. He submits that, based on his notes of the conference, Ellis J said it would be helpful to the Court if the parties would provide more by way of guidance as to what quantum of security would be appropriate.

[28] As I noted in the Second Judgment at [13], the defendant groups provided some guidance on the appropriate quantum of security and put forward a specific amount of security sought in their respective written submissions dated 20 July 2023 and 21 July 2023, nearly two weeks in advance of the hearing. Further guidance was provided to the Court by counsel for the defendant groups in oral submissions at the hearing of the security for costs applications.

[29] I remain of the view that the defendants did not act unreasonably in not indicating the amount of security sought at an earlier stage, such that costs should be reversed, refused or reduced. This ground does not provide any basis for reversal, discharge or variation of the Second Judgment.

Mathematical objectivity

[30] The plaintiff contends that I was wrong to focus on the fact that the order for security for costs obtained by the defendants ($60,000) was twice the value or benefit of the plaintiff's Calderbank offer ($30,000).

[31] The plaintiff notes that he offered $30,000, the defendant groups collectively sought $160,000 ($80,000 each), and the Court ordered $60,000. The plaintiff contends that the $60,000 ordered is much closer to the $30,000 offered by the plaintiff than the $160,000 sought by the defendants. The plaintiff contends that, on this basis, the defendants were the unsuccessful parties. The plaintiff also contends that the Court should take into account what the defendants achieved as against the costs they have incurred and have claimed in respect of the security for costs applications. The plaintiff contends that the defendants have taken a "Rolls Royce" approach to the litigation and should not be rewarded with "Rolls Royce" costs.

[32] I do not agree with the plaintiff's approach. In this case, the plaintiff vigorously opposed any award of security for costs including putting forward evidence to establish that the threshold test under r 5.41(1) of the High Court Rules was not met. The issue of whether the threshold test was met and whether the Court should exercise its discretion to order security for costs occupied the bulk of the hearing and the First Judgment. The defendants were successful in establishing that the threshold test was met and that the Court should order security for costs and were awarded $60,000

security for costs. It is not unusual for a party who has obtained an order for security for costs to be considered the successful party and awarded costs even though the order is less than the amount of security sought.[9]

[33] I do not agree with the plaintiff that the costs order should have been reversed, discharged or varied because his Calderbank offer was closer to the order for security for costs made in the First Judgment than the amount of security sought by the defendant groups. The issue is whether, under r 14.11 of the High Court Rules, the Calderbank offer made by the plaintiff should have been taken into account on the basis that it exceeded the amount of, or was more beneficial than, the judgment obtained by the defendant groups, or was close to the value or benefit of the judgment. The plaintiff's Calderbank offer was for the total sum of $30,000 and did not include payment of the defendants' costs incurred to that stage. The Calderbank offer did not exceed the order for security for costs obtained by the defendants ($60,000), nor was it more beneficial than, or close to, the value or benefit of the judgment. As a result of rejecting the plaintiff's offer, and pursuing their applications, the defendant groups obtained an order for security for costs which is twice the amount of the offer and orders for costs on a 2B basis and reasonable disbursements.

[34] Nor do I consider that the defendants acted unreasonably or without reasonable justification in not accepting the Calderbank offer such that the costs award should have been refused or reduced under r 14.7 of the High Court Rules. The reasonableness of a party's rejection must be considered at the time the offer was made, not against the subsequent result.[10] The plaintiff's Calderbank offer was low given that that there were two defendant groups, and the offer did not include payment of the defendants' costs.

[35] The plaintiff relies on *Grow Build NZ Ltd (in liq) v Timber Cabins Group Ltd*.[11] In that case, the defendant sought an order for security for costs of $65,000 against the

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[9] See for example *Oxygen Air Ltd v LG Electronics Australia Pty Ltd* [2019] NZHC 759 at [16]–[17].

[10] *New Zealand Sports Merchandising Ltd v DSL Logistics Ltd* HC Auckland CIV-2009-404-5548, 19 August 2010 at [36]; *Samson v Mourant* [2016] NZHC 1119 at [44]; and *Weaver v HML Nominees Ltd* [2016] NZHC 473 at [30].

[11] *Grow Build NZ Ltd (in liq) v Timber Cabins Group Ltd* [2024] NZHC 26.

plaintiff. The plaintiff submitted that, if security of costs was to be ordered, then a total sum of approximately $23,000 security for costs should be paid in three stages. The ultimate order for security was $35,000 to be paid in three stages, the first stage being a payment of $5,000 up to the completion of discovery. The Court found that costs should lie where they fall. However, in that case, the plaintiff did not contest the threshold issue (as the plaintiff did in this case) and put forward a proposal for staged security for costs. Further, the order that costs should lie where they fall was based on the "special circumstances" of the case.[12] In particular, the plaintiff had previously indicated to the defendant, and submitted at the hearing, that it could fund $5,000 security for costs to the completion of discovery and, at that stage, the position on the merits would be clearer. The Court found that, if the plaintiff determined post-discovery that it ought not to proceed with its claim, then the application for security would have been pointless as the plaintiff was prepared to agree to pay $5,000 until discovery in any event. Further, the Court found that if the defendant had held off making an application for security for costs until after discovery, and the plaintiff had determined by that stage to continue with its claim, then the plaintiff may have been prepared to agree to pay security for costs for subsequent stages. I do not consider any such special circumstances exist in this case.

[36] With regard to the plaintiff's argument in relation to "Rolls Royce" costs, I do not consider that the defendants took a "Rolls Royce" approach to this litigation by applying for security for costs or that the defendants have been awarded "Rolls Royce" costs. The defendants have been successful in obtaining an order for security for costs and have been awarded costs on a 2B basis for the steps taken in pursuing their applications for security for costs. The defendants submit that the number of steps required was higher than it should have been because of the plaintiff's approach to the applications, in particular the number of memoranda filed by the plaintiff which the defendants were required to respond to. The defendants note that time allocations have been split 50/50 where joint memoranda were filed in response to the plaintiff. The plaintiff has not raised any specific issues with the steps set out in the defendants' schedule of costs. Indeed, he has adopted the defendants' schedule of costs as a template for the calculation of his own costs.

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12 At [16]–[20].

High Court Rules, r 14.15

[37] Rule 14.15 of the High Court Rules provides:

> The court must not allow more than 1 set of costs, unless it appears to the court that there is good reason to do so, if—
>
> (a) several defendants defended a proceeding separately; and
>
> (b) it appears to the court that all or some of them could have joined in their defence.

[38] The plaintiff submits that, in this case, the interests of the defendant groups with regard to seeking security for costs were aligned and their separate applications overlapped. The plaintiff contends that the defendants could have brought one application for security for costs which would have been more efficient.

[39] The plaintiff submits that r 14.15 of the High Court Rules is expressed in mandatory terms and that I erred by deviating from r 14.15 by allowing two sets of costs without providing any reasons for the deviation.

[40] Rule 14.15 is directed towards the defence of substantive proceedings. However, the rule has been found to apply to interlocutory steps where the defendants are applicants. The rule reflects the policy requiring the Court to exercise some caution before awarding costs in favour of multiple parties, particularly when there is some overlap in the litigation positions of those parties. The need for separate representation substantively is relevant to the extent to which defendants would otherwise be expected to share the burden on interlocutory steps.[13]

[41] In this case, the plaintiff has issued proceedings against four defendants; the first defendant, Imran Kamal, and the company through which he undertakes insolvency work (second defendant), and the third defendant, Kevin Davies, and the company through which he undertakes insolvency work (fourth defendant). The defendants are defending the proceedings as two defendant groups with separate representation as noted at [88] of the First Judgment and [13] of the Second Judgment. The plaintiff's case against each defendant group is different as noted at [62] and [64]

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[13] *Houghton v Saunders* [2013] NZHC 3452 at [36].

of the First Judgment. The case against the first and second defendants is based on the allegation that it was the first defendant who was the author of the defamatory report. The case against the third and fourth defendants is that they are liable as "joint publishers" because of their failure to remove or contradict statements made in the report. There are also differences between the defendant groups in relation to the affirmative defences that each group may raise. In the circumstances, there is the potential for different and possibly conflicting positions to be taken by the two defendant groups in defending the plaintiff's claims.

[42] In the circumstances, it was clear to me when issuing the First Judgment and the Second Judgment, and remains clear to me, that the defendant groups had to make separate applications for security for costs, including affidavit evidence and submissions, and be separately represented. The merits of the plaintiff's claim against each group and the merits of the affirmative defences that have been or could be raised by each group were important considerations in determining whether it was just in all the circumstances to make an order for security in favour of both defendant groups (once it was determined that the threshold test was met).

[43] Further, it was clear to me that there was no unnecessary duplication of evidence in the affidavits filed on behalf of the two defendant groups, and that counsel for the defendant groups had cooperated to avoid unnecessary duplication of submissions. Counsel for the first and second defendants' submissions were the primary submissions on the legal test for security for costs and on the threshold test. Counsel for the first and second defendants thereafter considered the defences raised, or which will be raised, by the first and second defendants including submissions on 'no more than minor harm', 'absolute privilege, 'qualified privilege, 'truth', 'truth as a whole' and 'honest opinion'. Counsel for the first and second defendants' submissions also covered issues of complexity and the appropriate amount of security.

[44] The submissions for the third and fourth defendants for the security for costs hearing focussed on 'no publication' by the third and fourth defendants. The submissions also briefly covered affirmative defences relevant to the third and fourth defendants including 'qualified privilege', 'absolute privilege' and 'honest opinion', focussing on the plaintiff's contentions with regard to the third and fourth defendants'

reliance on these defences. The submissions also covered the argument that the claim against the third defendant is an abuse of process.

[45] In the circumstances, I did not consider it was necessary to specify reasons why two sets of costs are appropriate in this case. The requirement in r 14.15 that the Court must not allow more than one set of costs (unless it appears to the Court that there is good reason to do so) applies *if* it appears to the Court that all or some of the defendants could have joined in their defence (in this case, interlocutory applications). It did not appear to me that the two defendant groups could have made a joint application for security for costs. Indeed, it was plain that they could not properly have done so. Further, I was satisfied there was no unnecessary duplication of submissions or evidence. I considered the schedule of costs put forward by the defendants. The schedule allocated costs for all relevant steps in the proceedings between the two defendant groups, including splitting the time allocations for five joint memoranda, and calculated costs for each group. I found at [15] of the Second Judgment that "[t]he calculation of costs and disbursements in the schedule appears to be in accordance with the High Court Rules and reasonable." I also noted at [15] of the Second Judgment that the plaintiff had not raised any issues with the defendants' schedule of costs.

[46] Even if I was required to specify reasons for awarding two sets of costs in this case, I do not consider that any error in this regard leads to reversal, discharge or variation of the Second Judgment. I remain of the view that it is appropriate to award two sets of costs in respect of the separate applications for security for costs by the two defendant groups for the reasons set out at [41]–[44] above.

Summary – reversal, rescinding, discharge or variation

[47] Even if I have jurisdiction to entertain a further application by the plaintiff for reversal, discharge or variation of the costs decision in this case under rr 14.8(2) and/or 7.49, I do not consider that any of the grounds raised by the plaintiff fall within the categories allowing for reversal, rescinding, discharge or variance of the costs decision as set out at [13] and [15] above.

[48] While the Court lacked information with regard to the plaintiff's Calderbank offer in making the costs decision in the First Judgment, the Calderbank offer was put before the Court by the plaintiff in his memorandum dated 24 October 2024 and was considered in the Second Judgment.

[49] Therefore, I find there is no basis for reversal, rescinding, discharge or variance of the costs decision in the Second Judgment under rr 14.8(2) or 7.49 of the High Court Rules.

Recall

[50] Rule 11.9 of the High Court Rules provides that "[a] Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed."

[51] It is clear that r 11.9 has no application once a judgment is sealed. In this case, the costs decision was sealed on 1 November 2023, before the plaintiff's application for recall was filed.

[52] The Court retains an inherent power to correct errors, in exceptional circumstances, in the interests of justice, even where a judgment has been sealed. The types of cases where the Court may exercise its inherent jurisdiction to recall or rescind a judgment after it has been sealed are:[14]

(a) a slip or omission may be rectified;

(b) a judgment may be set aside, usually by separate action, where it was obtained by fraud;

(c) a case may be reopened where fresh evidence not previously available has come to light which is material to the outcome of the case;

(d) a judgment obtained by consent may be reopened; and

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14 *Herron v Wallace* [2016] NZHC 2426, (2016) 23 PRNZ 620 at [33].

(e) a supplementary judgment may be given to cover a matter not previously dealt with.

[53] It is apparent that none of these categories apply in this case. The categories of exception are not exhaustive. However, for the reasons set out above, I do not consider that this is a case where it would be appropriate to exercise the inherent jurisdiction to recall or rescind the judgment.

Leave to appeal

[54] The plaintiff also applies for leave to appeal to the Court of Appeal under s 56(3) of the Senior Courts Act 2016.

[55] The principles are well settled. The leading case is the Court of Appeal's judgment in *Greendrake v District Court of New Zealand*, where, citing *Finewood Upholstery Ltd v Vaughan*,[15] Brown and Gilbert JJ articulated the principles as follows:[16]

> (a) a high threshold exists;
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> (b) the applicant must identify an arguable error of law or fact;
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> (c) the alleged error should be of general or public importance warranting determination or otherwise of sufficient importance to the applicant to outweigh the lack of general or precedential value;
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> (d) the circumstances must warrant incurring further delay; and
>
> (e) the ultimate question is whether the interests of justice are served by granting leave.

[56] In *Ngai Te Hapu Inc v Bay of Plenty Regional Council*, the Court of Appeal observed that:[17]

> [17] … leave to appeal [an interlocutory decision] should only be granted where the significance or implications of an arguable error of fact or law, either for the particular case or for the applicant or as a matter of precedent, warrants the further delay which the appeal process would involve.

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15 *Finewood Upholstery Ltd v Vaughan* [2017] NZHC 1679 at [13].

16 *Greendrake v District Court of New Zealand* [2020] NZCA 122 at [6]; and *Stockman v Health and Disability Commissioner* [2022] NZCA 511 at [13].

17 *Ngai Te Hapu Inc v Bay of Plenty Regional Council* [2018] NZCA 291 at [17].

[57] As stated in *Finewood Upholstery Ltd v Vaughan*, the leave process is intended to operate as a filter to ensure that only matters that are properly the subject of appeal proceed.[18] The objective is to avoid wasting scarce resources, without compromising the interests of justice.[19]

[58] The plaintiff contends that I erred by:

(a) finding that the defendants were the successful parties;

(b) not properly considering the effect of the plaintiff's Calderbank offer; and

(c) deviating from r 14.15 High Court Rules without specifying reasons for allowing two sets of costs.

[59] For the reasons set out above, I am not satisfied that the plaintiff has identified any arguable error which would justify interference with the costs decision in the Second Judgment.

[60] Even if I am wrong in this regard and there is an arguable error, I do not consider that the matters raised by the plaintiff are matters of general or public importance or precedential value warranting leave to appeal. It seems to me that the issues are confined to the facts of this case and the exercise of discretion regarding costs in the circumstances of this case. Nor do I consider that the matters raised are of sufficient importance to the plaintiff to outweigh the lack of any general or public importance or precedential value. Further, I do not consider that the circumstances of this case warrant further delay to the progression of the substantive proceedings,

[61] Overall, I do not consider that it is in the interests of justice that leave to appeal be granted in respect of the costs decision in the Second Judgment. An appeal is only going to result in further delay and further unnecessary costs being incurred by the parties.

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18 *Finewood Upholstery Ltd v Vaughan*, above n 15, at [13].
19 *Swanwick v Bostock* [2023] NZHC 2863 at [7].

Result

[62] The plaintiff's application for reversal, rescinding, discharge or variation of the costs decision in the Second Judgment under rr 14.8(2) or 7.49 is dismissed.

[63] The plaintiff's application for the Second Judgment to be recalled under r 11.9 of the High Court Rules 2016 is dismissed.

[64] The plaintiff's application for leave to appeal the Second Judgment under s 56(3) of the Senior Courts Act 2016 is dismissed.

[65] With regard to costs, the defendants have been successful in opposing the plaintiff's omnibus application. The first and second defendants seek increased costs and the third and fourth defendants seek indemnity costs. However, I have not heard full argument on the issue of costs. The parties should endeavour to agree on costs. If agreement cannot be reached then memoranda may be filed (not exceeding three pages, excluding costs schedules) and costs will be determined on the papers.

Associate Judge Skelton

Solicitors:
Darroch Forrest Lawyers, Wellington for First and Second Defendants
Langford Law, Wellington for Third and Fourth Defendants