

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA493/2023
[2024] NZCA 475

BETWEEN

AMIR FAZAL MALIK
First Applicant

TRINITY JOAN WILSON
Second Applicant

AND

ZAINULABIDIN SYED
Respondent

Court: Courtney and Ellis JJ

Counsel: Applicants in Person
Respondent in Person

Judgment: 23 September 2024 at 2.30 pm
(On the papers)

JUDGMENT OF THE COURT

A The application to adduce further evidence is declined.

B The applicants must pay the respondent costs for a standard application on a band A basis together with usual disbursements.

REASONS OF THE COURT

(Given by Courtney J)

[1] In 2018 Churchman J found Mr Malik and Ms Wilson liable to Mr Syed in defamation.¹ The question of quantum was determined by Isac J in 2023. The Judge

¹ *Syed v Malik* [2018] NZHC 2278.

gave judgment in favour of Mr Syed for \$225,000.² Mr Malik and Ms Wilson are appealing the quantum judgment.³ They now apply for leave to adduce further evidence in the appeal.⁴

[2] The criteria for admission of new evidence on a civil appeal are well established. The evidence will generally not be admitted unless it is fresh, credible and cogent. Evidence that is not fresh should not be admitted unless the circumstances are exceptional and the grounds compelling.⁵

[3] The evidence that Mr Malik and Ms Wilson seek to adduce comprises a bundle of documents filed in the 2018 proceeding and relates to the liability aspect of the claim. The documents were not before the Judge in the quantum hearing.

[4] It is evident from the application and the submissions that Mr Malik and Ms Wilson essentially seek to relitigate the liability finding. However, liability is not in issue in this appeal. The proposed evidence is not fresh and has no cogency in the context of an appeal against the quantum judgment. There is no basis on which it could properly be admitted.

Result

[5] The application to adduce further evidence is declined.

[6] The applicants must pay the respondent costs for a standard application on a band A basis together with usual disbursements.

² *Syed v Malik* [2023] NZHC 1676 at [51]. Mr Malik was found to be liable for the full amount and Ms Wilson was found to be jointly and severally liable with Mr Malik for \$150,000. This reflected her lesser role and culpability: see at [50] and [52].

³ *Malik v Syed* [2024] NZCA 49. This Court granted an extension of time to appeal the quantum judgment but declined to extend time to appeal the liability judgment.

⁴ Court of Appeal (Civil) Rules 2005, r 45.

⁵ *Lawyers for Climate Change Action NZ Inc v Climate Change Commission* [2023] NZCA 443 at [12], citing: *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 (CA) at 192–193; and *Paper Reclaim Ltd v Aotearoa International Ltd (Further Evidence) (No 1)* [2006] NZSC 56, [2007] 2 NZLR 1 at [6].