

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

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

CIV-2024-485-538  
[2025] NZHC 3468

BETWEEN

CHANTELLE BAKER  
Plaintiff

AND

STUFF LIMITED  
First Defendant

KATE HANNAH  
Second Defendant

Hearing: On the papers

Appearances: M Hague and K Wang for Plaintiff  
D Nilsson for First and Second Defendant

Judgment: 14 November 2025

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**JUDGMENT OF ASSOCIATE JUDGE SKELTON**

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[1] In my judgment dated 4 June 2025 (the Judgment),<sup>1</sup> I ordered the plaintiff to pay security for costs in the sum of \$100,000 in three stages.<sup>2</sup> Subsequently, I ordered the defendants were entitled to travel and accommodation costs for counsel.<sup>3</sup> The plaintiff now seeks leave to appeal these orders pursuant to s 56(3) of the Senior Courts Act 2016. The defendants oppose.

[2] The background is set out at [1]–[9] of the Judgment. I understand the plaintiff has paid the first tranche of security in accordance with my order.

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<sup>1</sup> *Baker v Stuff* [2025] NZHC 1434 [Judgment].

<sup>2</sup> At [57].

<sup>3</sup> *Baker v Stuff* HC Wellington CIV-2024-485-538, 25 June 2025 [Costs Minute].

## Legal principles for leave to appeal

[3] The principles are well settled. The leading case is the Court of Appeal's judgment in *Greendrake v The District Court of New Zealand*, where Brown and Gilbert JJ articulated the principles as follows:<sup>4</sup>

- (a) a high threshold exists;
- (b) the applicant must identify an arguable error of law or fact;
- (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;
- (d) the circumstances must warrant incurring further delay; and
- (e) the ultimate question is whether the interests of justice are served by granting leave.

[4] In *Ngai Te Hapu Inc v Bay of Plenty Regional Council*, the Court of Appeal observed that:<sup>5</sup>

[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.

[5] These principles invite a brief judgment dealing with any application for leave. 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.<sup>6</sup> The objective is to avoid wasting scarce resources, without compromising the interests of justice.<sup>7</sup>

## Issues

[6] The plaintiff contends that I have erred in law or fact through:

- (a) a premature assessment of the merits of the plaintiff's claim;

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<sup>4</sup> *Greendrake v The District Court of New Zealand* [2020] NZCA 122 at [6] and *Stockman v Health and Disability Commissioner* [2022] NZCA 511 at [13].

<sup>5</sup> *Ngai Te Hapu Inc v Bay of Plenty Regional Council* [2018] NZCA 291 at [17].

<sup>6</sup> *Finewood Upholstery Ltd v Vaughan* [2017] NZHC 1679 at [13].

<sup>7</sup> *Swanwick v Bostock* [2023] NZHC 2863 at [7].

- (b) relying on an insufficient evidential basis for assessing her inability to pay;
- (c) improperly drawing an adverse inference that the plaintiff is unable to pay an adverse costs award;
- (d) errors in the balancing exercise; and
- (e) awarding costs for travel and accommodation without the required finding of special circumstances.

[7] The plaintiff does not contend that I made an error of law or fact in determining the threshold requirement for an order for security for costs. That is unsurprising as counsel for the plaintiff accepted at the hearing that the threshold requirement had been met.<sup>8</sup> Nor does the plaintiff challenge the quantum or terms of the order. The challenge is only as to the exercise of my discretion in determining that an order for security for costs was just in the circumstances, and for allowing travel and accommodation disbursements in the total sum of \$1,130.86. In this regard, the criteria for a successful appeal are stricter than for a general appeal. I must have made an error of principle, failed to take into account a relevant matter, or taken into account an irrelevant matter, or my decisions must be plainly wrong.<sup>9</sup>

[8] I now turn to consider whether the plaintiff has identified any arguable errors. To the extent necessary I will then consider the other relevant principles regarding leave to appeal identified at [3] above.

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<sup>8</sup> Judgment, above n 1, at [14]. Counsel for the plaintiff's submissions state that the plaintiff now resides in New Zealand. The plaintiff has not sought recall of the Judgment under r 11.9 of the High Court Rules 2016 on the basis of the alleged changed circumstances and no further evidence has been filed on the issue. The only evidence before me is that the plaintiff resides in Australia which was the accepted position at the hearing. In any event, as is apparent from the Judgment, above n 1, at [38], I was also satisfied that there is reason to believe the plaintiff may be unable to pay any costs order made against her under r 5.45(1)(b) of the High Court Rules.

<sup>9</sup> *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1 at [32] and *Jindal v Liquidation Management Ltd* [2023] NZCA 413 at [29].

## **Error of law or fact?**

### *Premature assessment of merits*

[9] The plaintiff contends that I made an error of law in finding that the plaintiff's claim "lacks merit and that there was a reasonable likelihood that an adverse costs award may ultimately be ordered against her". The plaintiff submits this was "premature and inappropriately involved a mini trial of the proceeding" and "the correct approach was to treat the merits as neutral". The plaintiff says my finding that there was reasonable likelihood of an adverse costs order ultimately being made "falls well short of the "little chance of success" threshold required to justify an order that may stifle a claim".<sup>10</sup>

[10] In accordance with the leading authorities, I made it clear in the Judgment that my consideration of the merits at this stage could be no more than a preliminary assessment.<sup>11</sup> Having reviewed the pleadings, my assessment was that the plaintiff may have difficulties in establishing her claim and that, while I could not say at this stage that the claim is entirely without merit, there was a reasonable likelihood of a costs order ultimately being made against her.<sup>12</sup> In particular, I noted the plaintiff has pleaded that she has insufficient knowledge of and therefore denies, most of the particulars of fact supporting the defendants' affirmative defences of truth and honest opinion. I noted later in the Judgment that some of these facts do not appear to be matters that should require proof at trial.<sup>13</sup>

[11] I agree with counsel for the plaintiff that my assessment of the merits falls short of the threshold required to justify an order for security that will stifle a claim and deny access to justice. I did not find that the claim was "altogether without merit — so that in the alternative it would be amenable to being struck out".<sup>14</sup> That is why, given the absence of evidence as to the plaintiff's financial situation, I specifically asked counsel for the plaintiff at the hearing whether he could obtain instructions from the plaintiff as to whether an order for security would mean she could not pursue her

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<sup>10</sup> *McLachlan v Mel Network Ltd* [2002] 16 PRNZ 747 (CA) at [15].

<sup>11</sup> Judgment, above n 1, at [19].

<sup>12</sup> At [26]–[27].

<sup>13</sup> At [26], [40] and [42]. See High Court Rules 2016, rr 5.62 and 5.63.

<sup>14</sup> See *Highgate on Broadway Ltd v Devine* [2012] NZHC 2288 at [23(b)].

claim. Counsel for the plaintiff obtained instructions during the hearing and submitted that any order for security up to around \$130,000 *would not* prevent the plaintiff pursuing her claim. I relied on the submission of counsel for the plaintiff in determining that an order for security for costs would not raise any access to justice issues.<sup>15</sup>

[12] I am not satisfied that the plaintiff has identified any arguable error in relation to my consideration of the apparent merits of the plaintiff's claim.

[13] I also note that even if I had treated the merits as a neutral factor, as counsel for the plaintiff contends was the correct approach, that would not have altered the outcome of the balancing exercise and exercise of my discretion. I considered five factors. If the merits of the plaintiff's case had been treated as neutral, that would mean two of the five factors were neutral, and three factors weighed in favour of an order for security. None of the factors I considered weighed against an order for security.

*Insufficient evidential basis for inability to pay and improperly drawing an adverse inference*

[14] I have dealt with these two grounds together as they essentially deal with the same issue.

[15] Counsel for the plaintiff refers to *New Zealand Kiwifruit Marketing Board v Maheatataka Cool Pack Ltd*, where the Court found that:<sup>16</sup>

There must be some evidential foundation or indication to support the charge that there is reason to believe that the plaintiff will be unable to pay the costs before the Court is justified in drawing an adverse inference from the absence of a positive response from the plaintiff.

[16] The plaintiff says that the evidence I relied on consisted of past statements made by the plaintiff regarding past fundraising and settlement of separate litigation.

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<sup>15</sup> Judgment, above n 1, at [49]–[50].

<sup>16</sup> *New Zealand Kiwifruit Marketing Board v Maheatataka Col Pack Ltd* (1993) 7 PRNZ 209 (HC) at 212.

The plaintiff says that the “way that this evidence was used amounted to speculation and provided no credible basis into her current financial position”.

[17] In this case, it was accepted that the threshold test was met under r 5.45(1)(a). Counsel for the plaintiff contended at the hearing that I was nevertheless required to consider whether there was reason to believe that the plaintiff will be unable to pay the defendants’ costs if unsuccessful as part of the exercise of my discretion. In the circumstances, I was not satisfied that I was necessarily required to consider this issue as part of the exercise of my discretion.<sup>17</sup> However, I considered the issue as part of my consideration of whether the plaintiff has access to third party funding as the financial position of the plaintiff appears relevant to this discretionary factor.<sup>18</sup>

[18] I noted in the Judgment that what is contemplated by the test is that there is some evidential basis, which may be evidence of surrounding circumstances rather than direct evidence, from which it may be reasonably inferred that the plaintiff will be unable to pay costs.<sup>19</sup> I also noted that while a plaintiff opposing an application for security is not required to disclose their financial position, and the Court will give due weight to a plaintiff’s sworn assertion that he or she will be able to pay costs, this is not decisive.<sup>20</sup> If it is a bald assertion or supported only by sparse details, an adverse inference may be made where, for example, the defendant has put a plaintiff’s inability to pay sufficiently in issue to require more than a bald assertion of ability to pay.<sup>21</sup>

[19] The defendants adduced evidence of interviews given by the plaintiff which indicated that the plaintiff was relying on the support of third parties, including Centrist, who the plaintiff stated was “bringing, they are helping to bring this lawsuit” because it “is a big financial investment”. The plaintiff also stated that she had settled another proceeding backed by Centrist which allowed her to pursue this “far more

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<sup>17</sup> See *Keezz Ltd v Waikato District Health Board* [2020] NZHC 2330 at [30].

<sup>18</sup> Judgment, above n 1, at [15] and [28]–[39] and *Highgate on Broadway Ltd v Devine*, above n 14, at [22(d)].

<sup>19</sup> Judgment, above n 1, at [37] citing *Concorde Enterprises Ltd v Anthony Motors (Hutt) Ltd No 2* [1977] 1 NZLR 516 (SC) at 519; *Keezz Ltd v Waikato District Health Board*, above n 17, at [32]; *Cook v Thomson* [2022] NZHC 3373 at [17]; and Jessica Gorman and others *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [HR5.45.02].

<sup>20</sup> Judgment, above n 1, at [37] citing *Arnold v Fairfax New Zealand Ltd* [2017] NZHC 1757 at [9] and *Keezz Ltd v Waikato District Health Board*, above n 17, at [40] citing *New Zealand Kiwifruit Marketing Board v Maheatakata Cool Pack Ltd*, above n 16, at 212.

<sup>21</sup> *Arnold v Fairfax New Zealand Ltd*, above n 20, at [9].

expensive” proceeding. The plaintiff also stated in one interview that she was relying on having a legal team “who is relatively affordable as far as legal teams go”. The defendants also adduced evidence that they had arranged for searches of the land register in New Zealand for evidence of any real property owned by the plaintiff, but no property has been identified.

[20] The plaintiff’s affidavit evidence confirmed that “Centrist provided support that contributed to my ability to pursue legal action”, but that her arrangements with Centrist had ceased. She stated she would “continue with legal proceedings even if they [her supporters] decide to stop supporting [her].”

[21] The evidence regarding third party supporters raised a question as to whether the plaintiff herself could pay any adverse award of costs.<sup>22</sup> It is unlikely the defendants would have any recourse against third parties. In this context, the plaintiff baldly denied the defendants’ assessment that she would be unable to pay costs. She chose not to adduce any evidence as to her financial position and assets to provide the Court with some assurance as to her ability to pay an adverse costs award.

[22] In the circumstances, I was satisfied there was a sufficient evidential basis, and the defendants had put the plaintiff’s inability to pay sufficiently in issue, for me to reasonably infer that the plaintiff will be unable to pay an adverse costs award. I do not consider that my use and reliance on the evidence before me amounted to “speculation”. I was entitled to consider and rely on evidence of surrounding circumstances (including interviews given by the plaintiff about third party supporters of her litigation and the plaintiff’s evidence that her arrangement with Centrist had ceased) rather than direct evidence of the plaintiff’s financial position.

[23] Counsel for the plaintiff refers to *Keezz Ltd v Waikato District Health Board*, where the defendants, as applicants for security for costs, argued that the net asset position of the plaintiffs did not demonstrate that the plaintiffs would be able to meet an adverse costs award should they not succeed in their claims.<sup>23</sup> Counsel for the

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<sup>22</sup> In the Judgment at n 20, I referred to *Gold Star Invest Ltd v V* [2021] NZHC 334 at [15]–[16], which states that the test under r 5.45(1)(b) is whether the plaintiff as an entity in their own right is able to pay costs.

<sup>23</sup> *Keezz Ltd v Waikato District Health Board*, above n 17, at [35]–[41].

plaintiff submits that this information provided a proper evidential foundation for determining that the plaintiffs were unable to pay an adverse costs award. However, in that case, the plaintiffs chose to provide information on their assets in opposition to the application for security for costs. The evidence as to assets was not adduced by the defendant. The Court was critical of the plaintiffs failing to provide more detailed financial information, including as to income and current, future and contingent liabilities. Further, the Court held that that this was a relevant factor in finding that there was reason to believe the plaintiffs were unable to pay an adverse costs award.<sup>24</sup> In the present case, the plaintiff chose not to provide any financial information at all.

[24] I am not satisfied that the plaintiff has identified any arguable error in relation to my consideration of these issues as part of the exercise of my discretion.

[25] I note that the defendants have filed additional evidence in opposition to the application for leave to appeal indicating the plaintiff has launched a fundraising campaign in relation to this proceeding. I do not consider it is appropriate for me to take that evidence into account in considering whether I should grant leave to appeal the Judgment.

*Error in balancing exercise*

[26] Counsel for the plaintiff submits I erred in balancing the parties' respective interests. He submits that I prioritised the defendants' protection over the plaintiff's fundamental right of access to justice including by:

- (a) failing to give sufficient weight to the fact that the plaintiff's claim is not commercially funded, as acknowledged by the defendants, and she has not ceded control to any third party and her supporters have no financial stake in the outcome;
- (b) ordering security in circumstances which risk stifling a genuine claim of defamation against a major media organisation which is a matter of significant public interest;

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<sup>24</sup> At [40].

- (c) undertaking a balancing exercise that was flawed by legal errors (discussed above), which the interests of justice require be corrected;
- (d) placing undue weight on the burden of defending the claim and failing to consider that the whole documentary is at issue because that is how the defendant's defamed the plaintiff.

[27] I do not consider that I erred in balancing the parties' respective interests. I gave sufficient weight to the fact the plaintiff's claim is not commercially funded. I noted that there is no commercial third-party litigation funder involved in this case, and that this was accepted by the defendants. I noted that, therefore, this is not a case which necessarily requires the Court to ensure that the defendants are protected by "relatively full security".<sup>25</sup> However, it was relevant and appropriate to take into account the evidence before me regarding support by third parties. The relevance of the evidence regarding third party supporters in this case was that it raised a question as to the ability of the plaintiff in her own right to pay any adverse award of costs,<sup>26</sup> as well as indicating that it is less likely the plaintiff's case would be thwarted by ordering security.<sup>27</sup>

[28] I do not consider that I ordered security in circumstances which risked stifling the plaintiff's claim. As noted above, counsel for the plaintiff obtained instructions during the hearing and submitted that any order for security up to around \$130,000 *would not* prevent the plaintiff pursuing her claim. I understand that the plaintiff has paid the first tranche of security (\$20,000) and is continuing to pursue the substantive proceeding.

[29] I do not consider I placed undue weight on the burden of defending the claim. It was relevant and appropriate to note that the pleadings indicate the plaintiff has put

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<sup>25</sup> Judgment, above n 1, at [28]. In this case, on the basis of the defendants' estimate of scale costs, relatively full security would have been in the range \$200,000 to \$300,000. Recognising that this would not have been appropriate, the defendants sought security in the sum of \$150,000. I awarded two-thirds of this amount, approximately one third to 50 per cent of full security, and mitigated the immediate obligation on the plaintiff by ordering that it should be paid in three tranches.

<sup>26</sup> Another case where this issue arose is *Cook v Thomson*, above n 19, at [19], [20] and [30].

<sup>27</sup> *Highgate on Broadway Ltd v Devine*, above n 14, at [22(d)].

the defendants to proof on matters that should not require proof at trial, including the fact of content posted by the plaintiff on various online platforms.<sup>28</sup>

[30] Again, I am not satisfied that the plaintiff has identified any arguable error in relation to the balancing exercise.

*Awarding travel and accommodation costs*

[31] The plaintiff submits I made an error of law by allowing travel and accommodation disbursements for counsel for the defendants in the total sum of \$1,130.86 without the “required finding of special circumstances”.

[32] The plaintiff relies on *Russell v Taxation Review Authority*, in which Fisher J held:<sup>29</sup>

It would be hard to argue necessity where there is an adequate choice of suitable counsel in the High Court centre involved and no other special justification for instructing out of town counsel. Of course that is only the starting point. Available experience and expertise is one obvious dimension. ... Another could be the location of the client. If the client comes from a different region the cost of transporting counsel from that region might well be outweighed by efficiencies gained during the preparatory stage. A third could be disqualifying associations between local counsel and the parties or issues at stake, eg proceedings against a local lawyer.

[33] The plaintiff also relies on *Air New Zealand Ltd v Commerce Commission*.<sup>30</sup> In that case, Rodney Hansen J agreed with Fisher J that in the absence of special circumstances and “where suitable counsel are available in the city where the hearing takes place, the travel and accommodation expenses of out of town counsel would not normally be recoverable”.<sup>31</sup>

[34] I found that “special circumstances” existed for the reasons set out at [6] and [7] of my Costs Minute. One of the reasons was Stuff’s location which is a matter recognised in *Russell* as constituting a “special circumstance”. While Stuff’s registered office is in Wellington, its primary place of business is in Auckland, where

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<sup>28</sup> Judgment, above n 1, at [40].

<sup>29</sup> *Russell v Taxation Review Authority* (2000) 14 PRNZ 515 (HC) at [25].

<sup>30</sup> *Air New Zealand Ltd v Commerce Commission* (2005) 17 PRNZ 786 (HC).

<sup>31</sup> At [84].

its in-house legal team is based, and Stuff have established relationships with specialist defamation lawyers in Auckland.

[35] I also made it clear in the Costs Minute that it would have been unreasonable to require counsel for the defendants to appear by VMR when the plaintiff had the benefit of being represented in person.<sup>32</sup> VMR is a useful tool, but it should not be allowed to create disparity between parties. Further, it was entirely reasonable and appropriate, due to the vicissitudes of air travel to Wellington, for counsel to travel the day before the hearing to avoid the risk of the hearing being disrupted.

[36] I am not satisfied that the plaintiff has identified any arguable error in respect of awarding the travel and accommodation disbursements.

*Conclusion as to error of law or fact*

[37] I am not satisfied that the plaintiff has identified any arguable error of law or fact. In terms of the strict requirements for success on any substantive appeal that apply here, I am not satisfied that I made any error of principle, failed to take into account any relevant matter, took into account any irrelevant matter, or was plainly wrong in ordering security for costs and allowing the travel and accommodation disbursements.

**General or public importance**

[38] Any identified arguable errors should be of general or public importance warranting determination, or otherwise of sufficient importance to the plaintiff to outweigh the lack of general or precedential value.

[39] Counsel for the plaintiff submits that this case raises an issue of general importance “regarding the treatment of publicly supported litigants”. He submits that the Judgment:

... creates uncertainty as to when a plaintiff’s assistance from supporters can be used as a basis for an adverse inference for a security for costs application, potentially risking access to justice for non-commercially funded claims.

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<sup>32</sup> Costs Minute, above n 3, at [7].

[40] Counsel for the plaintiff also submits that the correct application of the “special circumstances” test for costs for out-of-town counsel “is a matter of practical importance for all litigants and ensures consistency in costs awards”.

[41] I have found above that the plaintiff has not identified any arguable error. However, even if I am wrong in this regard, I do not consider that the issues raised by the plaintiff above are of general or precedential value warranting leave to appeal. It seems to me that the issues raised relate only to the exercise of my discretion in the circumstances of this particular case. As noted in *McLachlan v MEL Network Ltd*, precedent plays a limited role in the assessment of individual applications for security for costs.<sup>33</sup>

[42] Whether it is appropriate to draw an adverse inference depends on the circumstances of each case.<sup>34</sup> The Judgment does not create “uncertainty” about when assistance from supporters can be used as a basis for an adverse inference for a security for costs application. It is clear that assistance from supporters may be relied on by the Court in assessing ability to pay costs, drawing an adverse inference and exercising its discretion in any particular case.<sup>35</sup>

[43] Similarly, the categories of special circumstances justifying costs for out-of-town counsel are not closed, and whether special circumstances exist will depend on the circumstances of each case. In this case, one of the reasons I found special circumstances existed, being the location of Stuff’s primary place of business, is recognised as constituting a special circumstance in the relevant case law.

### **Importance to plaintiff**

[44] This issue is not simply a question of importance of the issues raised to the plaintiff. The question is whether the issues raised are of such importance as to outweigh the lack of any general or precedential value.

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<sup>33</sup> *McLachlan v MEL Network Ltd*, above n 10, at [13] and [14].

<sup>34</sup> *New Zealand Kiwifruit Marketing Board v Maheatakata Cool Pack Ltd*, above n 16, at 212 and *100 Investments Ltd v Walker* [2023] NZHC 2584 at [17(a)].

<sup>35</sup> See, for example, *Cook v Thomson*, above n 19, at [19], [20] and [30].

[45] Counsel for the plaintiff appears to submit that the importance of the matter to the plaintiff is that she, as a private individual, “faces a significant financial barrier to pursuing a genuine defamation claim against a well-resourced media entity”. However, as noted above, counsel for the plaintiff obtained instructions during the hearing and submitted that any order for security up to around \$130,000 *would not* prevent the plaintiff pursuing her claim. I relied on this submission. Consistent with this position, I understand the plaintiff has paid the first tranche of security and is continuing to pursue the substantive claim in addition to applying for leave to appeal. The proceeding has not been brought to a “dead halt”.<sup>36</sup>

[46] I am not satisfied the issues raised are of sufficient importance to the defendant to outweigh the lack of general or precedential value.

### **Delay**

[47] An appeal will inevitably cause some delay in the progress and determination of this proceeding. The proceeding has already been delayed by the application for leave to appeal.

[48] For the reasons set out in the preceding sections, I am not satisfied that the decisions challenged involve any interest of sufficient importance to outweigh the costs and delay of an appeal.

### **Interests of justice**

[49] Overall, for the reasons set out above, I do not consider that it is in the interests of justice that leave to appeal is granted. There is no genuine issue of denial of access to justice.

### **Result**

[50] The plaintiff’s application for leave to appeal the Judgment and Costs Minute under s 56(3) of the Senior Courts Act 2016 is declined.

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<sup>36</sup> *Highgate on Broadway Ltd v Devine*, above n 14, at [23(b)].

[51] The defendants have been successful. I see no reason why they should not be awarded one set of costs on a 2B basis and reasonable disbursements, and I so order.

**Associate Judge Skelton**

Solicitors:  
Frontline Law, Wellington for Plaintiff  
LeeSalmonLong, Auckland for First Defendant  
McVeaghFleming, Auckland for Second Defendant