

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA356/2021
[2022] NZCA 56**

| | |
|---------|---|
| BETWEEN | CAOPING DING First Applicant |
| | BARRY BAI Second Applicant |
| AND | THOMAS EDMUND WILLIAM JAMES First Respondent |
| | KEATON PRONK, IAIN MCLENNAN AND MCDONALD VAGUE LIMITED Second Respondents |

Court: Brown and Courtney JJ

Counsel: Applicants in Person
B M K Pamatatau for First Respondent
B L Martelli for Second Respondents

Judgment: 14 March 2022 at 3.00 pm
(On the papers)

**JUDGMENT OF THE COURT
(Recall)**

The application for recall is dismissed.

REASONS OF THE COURT

(Given by Brown J)

[1] In a judgment delivered on 3 November 2021, the Court declined an application for leave to appeal under s 56(5) of the Senior Courts Act 2016 from the

refusal by the High Court¹ to add Ms Ding as a party to liquidation proceedings concerning NZSouthpole Team Ltd.²

[2] Ms Ding initially filed a document, dated 27 December 2021, entitled “Memorandum for applicants requesting correction of accidental slip”. A further expanded version dated 20 January 2022 was filed subsequently. The respondents’ memoranda in opposition treated Ms Ding’s memoranda at face value as applications under the slip rule. However, although the documents’ descriptions appeared to invoke the slip rule, in substance they sought a direction for a recall of the November judgment.

[3] As the Supreme Court recently stated in *S (SC39/2017) v R*³ the general rule is that a judgment, once delivered, must stand for better or worse, subject to appeal. A decision to recall will only be made in exceptional circumstances. It will be appropriate where some procedural or substantive error has occurred which would result in a miscarriage of justice.⁴

[4] It is difficult to discern from Ms Ding’s ten-page memorandum of 20 January 2022 the precise basis upon which a recall of the judgment is sought. The document makes extensive criticisms of the liquidators and revisits the argument made below on the substantive interlocutory application that the interests of justice would be served by joining Ms Ding as a party to the liquidation proceedings.

[5] However we are unable to identify any asserted error in the reasoning of our s 56(5) leave judgment, let alone one of such significance that it would warrant a recall direction.

[6] Consequently the application for recall is dismissed. There is no order for costs.

Solicitors:
Alden Ho, Auckland for First Respondent
HC Legal Limited, Auckland for Second Respondents

¹ *James v NZSouthpole Team Ltd (in liq)* [2021] NZHC 657 at [61] and [104].

² *Ding v James* [2021] NZCA 578.

³ *S (SC39/2017) v R* [2022] NZSC 7.

⁴ At [3].