

[1] In a decision delivered on 8 June 2020 this Court dismissed Mr Zhang’s application for leave to appeal a substantive decision of the Employment Court and the related costs decision.¹ In a separate decision delivered on 1 September 2020 the respondent, Telco Asset Management Limited, was awarded costs on the application.² Mr Zhang has applied to have the costs decision recalled (the Costs Decision).

[2] The circumstances leading up to the delivery of the Costs Decision are as follows. Telco applied for costs in accordance with the Court of Appeal (Civil) Rules 2005. It calculated the costs at a total of \$11,233. It did not seek any disbursements. Telco’s memorandum seeking costs was received by the Court on 15 June 2020. On 18 August 2020 the Registry forwarded the memorandum to Mr Zhang, asking for a response within 10 working days. Mr Zhang responded the following day by email, giving reasons that costs should not be paid. He did not indicate that he wished to file any further submissions.

[3] On 28 August 2020 the Registry advised Mr Zhang that a decision on the costs application was to be delivered on 1 September 2020. The following exchange followed between Mr Zhang and the Registry:

- (a) On 28 August 2020 Mr Zhang emailed the Registry saying “I will have a further response within 10 working days on next Monday, is that ok?”
- (b) The Registry responded “A further response to what sorry?”
- (c) Mr Zhang emailed “As to costs application from Telco, the deputy registrar emailed us on 18 August, said I have 10 working days for response, I have a further response due on next Monday.”
- (d) The Registry replied “Your response received via email on 19 August 2020 to the respondent’s memorandum seeking costs was referred to the Judge last week. I took that email as your response to the application.

¹ *Zhang v Telco Asset Management Limited* [2020] NZCA 223.

² *Zhang v Telco Asset Management Limited* [2020] NZCA 380.

Is there anything else you would like the Judge to consider?”

- (e) Mr Zhang said “Yes, I have more information for the Judge to consider, my name is Yan Zhang, not “Jan Zhang” on the memorandum so that the memorandum from the respondent should be dismissed, as there is no appellant called Jan Zhang. And there is more information on Monday as I am still working on it.”
- (f) The Registry responded “Because the matter on costs has already been heard on the papers by the Judges, you must seek leave to file any further submissions in respect of costs.”

[4] Then, on 31 August 2020, Mr Zhang filed a one-page document entitled “The further response of opposing the costs memorandum from Telco” in which he made five points in support of his assertion that costs ought not be granted. The further response memorandum was not referred to the panel. The Costs Decision was released on 1 September 2020.

[5] It is only in exceptional circumstances that a judgment of the Court will be recalled. The recognised categories in which that might happen are that (1) since the hearing a relevant statute of regulation has changed, or a relevant judicial decision of higher authority has been delivered; (2) counsel failed at the hearing to direct the Court to a legislative provision or an authoritative and plainly relevant decision or (3) for some other very special reason justice requires that the judgment be recalled.³

[6] In this case the only basis on which Mr Zhang could seek to have the judgment recalled is the third category, that there is some very special reason that justice requires the judgment to be recalled. However, justice does not require the recall of the judgment in this case. Mr Zhang was provided with the opportunity to respond to Telco’s memorandum seeking costs and he did so without any indication that he wanted to add anything to that response. Mr Zhang’s response was taken into account and explicitly considered in the Costs Decision.

³ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2], citing *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.

[7] The Registry correctly advised Mr Zhang that if he wished to make further submissions he would need leave to do so but Mr Zhang did not pursue that course.

[8] We would note that, in any event, the points that Mr Zhang makes in his further memorandum could not possibly have altered the Court's decision.

[9] The application for recall is dismissed.

Solicitors:
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