

IN THE SUPREME COURT OF NEW ZEALAND

**SC 4/2009
[2009] NZSC 29**

BETWEEN MICHAEL GREGORY
 Applicant

AND THOMAS PATRICK JOSEPH GOLLAN
 AND ORS
 Respondents

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: C S Henry for Applicant
 A M Powell for Respondents

Judgment: 30 March 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2,500 to the respondents.

REASONS

[1] The applicant, Mr Gregory, is suing the respondent police officers and the Attorney-General for compensatory and exemplary damages for assault and battery, trespass to land, unlawful arrest, false imprisonment, malicious prosecution, conspiracy to injure by unlawful means and misfeasance in public office. The High Court (Associate Judge's decision reviewed and confirmed by a High Court Judge) refused Mr Gregory's application under s 19A(2) of the Judicature Act 1908 for a jury trial of these civil proceedings. The Court of Appeal has dismissed Mr Gregory's appeal.

[2] A second appeal from an exercise of discretion, especially one which has been twice confirmed below, will rarely be permitted. In this case the law

concerning the circumstances in which a jury trial should be ordered in a civil proceeding is well settled and we see no error of principle in the way in which the matter has been dealt with by the Court of Appeal.

[3] Mr Henry, for the applicant, has asserted that there is a constitutional dimension to the case. He argues that Magna Carta 1297 (Imp) gives his client a right to a jury trial. But, even if it were accepted that c29 of Magna Carta extended to jury trials in civil proceedings, the matter is now covered by New Zealand legislation which makes it clear that proceedings are to be tried by Judge alone unless the Court exercises its discretion to order trial by jury. Any operation Magna Carta may once have had in relation to civil proceedings has now been plainly displaced by s 19A.¹

Solicitors:
Witten-Hannah Howard, Takapuna for Applicant
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¹ See David Clark, *The Icon of Liberty: The Status and Role of Magna Carta in Australian and New Zealand Law* (2000) 24 *Melb. U.L. Rev* 866 at p 883-884.