

BETWEEN                      LATIMER HOLDINGS LIMITED &  
   ANOR  
   Applicants

AND                              SEA HOLDINGS NEW ZEALAND  
   LIMITED  
   Respondent

Court:                      Keith J and Blanchard J

Counsel:                  S P Rennie for Applicants  
   B R Latimour and D J Cooper for Respondent

Judgment:                24 November 2004

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**JUDGMENT OF THE COURT**

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[1] The applicants seek leave to appeal against a decision of the Court of Appeal dismissing their appeal against the High Court's order granting summary judgment to the defendant/respondent. The High Court had concluded that the applicants' proceeding under s174 of the Companies Act 1993 could not succeed.

[2] It is plain that the criteria in s13(2) of the Supreme Court Act 2003 for a grant of leave are not met. We are therefore able to deal with the matter on the papers.

[3] The applicants expressly do not seek to disturb the Court of Appeal's approach to the determination of s174 applications generally. The Court in fact found against the applicants on several factual grounds, as did the High Court, and it is those which the applicants now wish to challenge.

[4] The appeal would involve no more than the re-examination of an exercise of the balancing of the rights of the controlling shareholder against the rights of minority shareholders in the company in the specific circumstances of this case. We are satisfied that it does not raise any issues of general commercial importance.

[5] Nor is there any appearance that a substantial miscarriage of justice has occurred. Indeed, on the particular facts, the conclusion of the lower courts that the application lacked merit seems unsurprising

[6] The application for leave is dismissed with costs of \$1000 plus disbursements, to be fixed if necessary by the Registrar.

Solicitors:  
Rhodes & Co, Christchurch for Applicants  
Bell Gully, Auckland for Respondent