IN THE SUPREME COURT OF NEW ZEALAND

SC 107/2011
[2011] NZSC 148

	BETWEEN	ECONICORP HOLDINGS LIMITED Applicant
	AND	MINISTER OF EDUCATION Respondent
Court:	Elias CJ, McGrath and William Young JJ	
Counsel:	R J Hollyman for Applicant M S R Palmer, R Chan and T M Bromwich for Respondent	
Judgment:	5 December 2011	

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs to the respondent of $2500.

REASONS

[1] This application for leave to appeal arises out of the construction of a school hall in 1999. The Minister of Education and the school's Board of Trustees have separately sued the builder and its design services provider for losses said to arise from defective foundations and construction of the building. The Board sued the builder for breach of contract and negligence and the design company in negligence. The Crown, which was not a party to the building contract, has sued both defendants in negligence.

[2] In the High Court,[1] the builder sought summary judgment and was successful in getting the Board's claim in contract struck out as being out of time under the Limitation Act 1950. The builder also succeeded in having the Crown's claim against it in negligence struck out because the builder did not owe the Crown a duty of care. On appeal by the Crown, its cause of action against the builder was

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1 *Board of Trustees, Glen Innes Primary School v Ahead Buildings, an operating Division of Econicorp Buildings Ltd* HC Auckland CIV-2006-404-1884, 21 December 2009.

reinstated by the Court of Appeal.[2] The builder now seeks to appeal to this Court against that judgment.

[3] As the proposed appeal is against an order made by the Court of Appeal on an interlocutory application, s 13(4) of the Supreme Court Act requires this Court to refuse leave to appeal, unless satisfied it is necessary in the interests of justice for the Court to hear and determine the appeal ahead of trial. If leave were given and the builder's appeal was successful, the dispute would still proceed to trial with the Crown, the Board, the builder and the designer all parties. The builder would not have to address the claim from the Crown, which would be confined to its tort claim against the design company, but trial of the factual issues concerning causation of the loss and its quantum would not be significantly affected by that. In these circumstances there is little inconvenience, let alone prejudice, to the builder in going to trial on the Crown's claim as well as that of the Board under its negligence cause of action.

[4] As well, as Arnold J in his judgment in the Court of Appeal pointed out, there are potential issues concerning what losses the plaintiffs will each be able to recover as owner and occupier respectively of the school hall. If the High Court determines the claims of both the Board and the Minister following a trial, and finds that the builder is liable to either or both, that Court is likely to be in a better position to determine which losses may be recovered and any questions of apportionment between defendants and contribution. So will appellate courts if the matters go to appeal.

[5] For these reasons we are not satisfied that it is in the interests of justice that this Court hear this proposed appeal ahead of trial. The threshold requirement for leave in s 13(4) of the Supreme Court Act is not satisfied and the application is accordingly dismissed.

Solicitors:
Cockroft d'Young Moorhouse, Auckland for Applicant
Crown Law Office, Wellington for Respondent

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2 *Minister of Education v Econicorp Holdings Ltd* [2011] NZCA 450.