

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 106/2018
[2019] NZSC 9

BETWEEN CHRISTIAN JOHN GILLIBRAND AND
MARY CAECILIA GILLIBRAND (AS
TRUSTEES OF THE CHRIS AND MARY
GILLIBRAND FAMILY TRUST)
Applicants

AND GEORGE PETER SWANEPOEL
Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: C T Patterson and E J Grove for Applicants
H M Twomey and S V Curlett for Respondent

Judgment: 21 February 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Costs of \$2,500 are awarded to the respondent.

REASONS

[1] Mr and Mrs Gillibrand, as trustees of their family trust, sued their solicitor (Mr Swanepoel) and their barrister (Mr Holgate) for negligently conducting proceedings brought against them. The High Court found the barrister negligent but not the solicitor.¹ The Gillibrand's appeal to the Court of Appeal against the latter finding was unsuccessful.²

¹ *Gillibrand v Swanepoel* [2017] NZHC 1209 (Woodhouse J).

² *Gillibrand v Swanepoel* [2018] NZCA 467 (Miller, Cooper and Winkelmann JJ).

[2] Mr and Mrs Gillibrand now seek leave to appeal to this Court against the Court of Appeal's finding that the trial Judge had not erred in admitting the evidence of Mr Darlow as expert evidence.³ Mr Darlow's evidence had been to the effect that in general Mr Swanepoel had acted as a reasonably competent solicitor would have acted when briefing a barrister.

Our assessment

[3] The proposed appeal is tied to the facts of this particular case. It therefore does not raise any matters of general, public or commercial importance. Nor does anything raised by the applicants suggest any risk of a miscarriage of justice.⁴

Result

[4] The application for leave to appeal is dismissed.

[5] Costs of \$2,500 are awarded to the respondent.

Solicitors:
Woodward Chrisp Lawyers, Gisborne for Applicants
Robertsons, Auckland for Respondent

³ At [74]–[77].

⁴ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, [2006] 3 NZLR 522 at [4]–[5] deals with the miscarriage of justice ground in civil cases.