

BETWEEN

RICHARD ELMORE FAY
Applicant

AND

WYNSTON ALEXANDER CECIL
CHIRNSIDE AND RATTRAY
PROPERTIES LIMITED
Respondents

Court: Elias CJ, Gault J

Counsel: H. McIntosh in support

Judgment: 2 December 2004

JUDGMENT OF THE COURT

[1] We have considered the written submissions in support of this application for leave to appeal. We do not require submissions from the respondents nor is an oral hearing necessary. Leave to appeal is refused.

[2] The determination of the Court of Appeal from which leave to appeal was sought is recorded in a minute of that Court dated 29 October 2004. The context is that there are before the Court of Appeal the adjourned appeal and cross-appeal against an award of damages made in favour of the applicant in the High Court. The finding of liability in that Court already has been upheld in a separate judgment in the Court of Appeal. Leave to appeal to this Court has been granted but the hearing has been deferred pending determination in the Court of Appeal of the issues relating to compensation.

[3] The applicant applied for directions in the Court of Appeal seeking to have the issues relating to remedy referred back to the trial Judge primarily on the ground

that there are new evidential matters to be addressed. The Court declined to adopt the course suggested and said that it would determine the compensation issue on the material already before the Court.

[4] Assuming, without deciding, that the direction contained in the Court's minute constitutes a decision on an interlocutory application, s13(4) of the Supreme Court Act 2003 states that leave must not be given unless the Court is satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded. That requirement is in addition to the criteria for leave in s13(2).

[5] It will be a rare case in which this Court will grant leave on a procedural matter. In this case the refusal to refer the case back to the High Court after determination of the appeal on liability is an entirely discretionary matter in which intervention on appeal would be extraordinary. There is no issue of general or public importance.

[6] We see no risk of a substantial miscarriage of justice; particularly since the liability judgment of the Court went some considerable distance in formulating its approach to the assessment of compensation which differed from that of the trial Judge.

[7] We note in the judgment an apparently earlier application to adduce further evidence was refused on the ground of lack of relevance. Of course, if it should be demonstrated that the yet further evidence is essential and otherwise admissible, r24 of the Court of Appeal Rules can be invoked.

[8] For these reasons the application is refused.

Solicitors:
Russell McVeagh, Wellington, for Applicant
Wynn Williams & Co, Christchurch, for Respondents

