IN THE SUPREME COURT OF NEW ZEALAND

SC 34/2005
[2005] NZSC 46

	BETWEEN	PAUL JULIAN BURKE AND GILLIAN ELIZABETH BURKE Applicant
	AND	THE WESTERN BAY OF PLENTY DISTRICT COUNCIL Respondent

Court: Keith J and Tipping J

Counsel: Applicants in person
S P Ward for Respondent

Judgment: 13 July 2005

JUDGMENT OF THE COURT

A. The application for leave to appeal is dismissed.

B. The applicants are to pay the respondent costs in the sum of $2,000.00 plus disbursements, to be fixed, if necessary, by the Registrar.

REASONS

[1] The applicants, Mr and Mrs Burke, were sued in the High Court by the respondent Council for unpaid rates. They brought a counter-claim against the Council for monies which they claimed to be owing in relation to the creation of an esplanade strip over part of their property. On 18 September 2004 the High Court entered judgment for the Council in respect of its claim for rates and dismissed the counter-claim.

[2] Having allowed the appeal period to elapse, Mr and Mrs Burke sought special leave from the Court of Appeal to appeal to that Court out of time. The application was made some four and a half months after the expiry of the appeal period. In a judgment delivered on 27 April 2005 the Court of Appeal declined to grant leave.

[3] Mr and Mrs Burke have now sought leave to appeal to this Court, not from the Court of Appeal's decision (which would not have been possible in the light of s 7(b) of the Supreme Court Act 2003) but from the original decision of the High Court. Their application is now, of course, substantially out of time. Nearly ten months had elapsed from the date of the High Court decision to the date when Mr and Mrs Burke sought leave to appeal directly from it to this Court.

[4] We have considered the written submissions filed and do not find it necessary to direct an oral hearing. The application must be dismissed for several reasons. First, there are no grounds in terms of s 14 of the Supreme Court Act for an appeal to be brought directly from the High Court to the Supreme Court in this case. Section 14 requires this Court to be satisfied that there are exceptional circumstances that justify taking the proposed appeal directly from the High Court to the Supreme Court. There are no such exceptional circumstances in this case. No significant points of law are involved. The case turned in the High Court essentially on matters of fact. Secondly, when an appeal from the Court of Appeal to this Court is precluded by s 7(b), it cannot be right, save perhaps in very exceptional circumstances, to allow that embargo to be circumvented by a direct appeal from the High Court. While there is no express statutory provision preventing an appeal directly from the High Court to this Court following a refusal of leave to appeal to the Court of Appeal, the policy behind the embargo in s 7(b) suggests that the circumstances in which such a direct appeal could be brought would have to be extremely compelling.

[5] Thirdly, the case is not one which in any event would satisfy the ordinary criteria for leave to bring an appeal to this Court set out in s 13. The appeal does not involve any matter of general or public importance nor one of general commercial significance. Nor are we of the view that a substantial miscarriage of justice may have occurred or might occur if leave were not given to bring an appeal to this Court.

Fourthly, no sufficient reason is advanced in this case for extending the ordinary period within which the present application could be made.

[6] For all these reasons the application must fail.

Solicitors:
Cooney Lees Morgan, Tauranga for Respondent