IN THE SUPREME COURT OF NEW ZEALAND

SC 9/2006
[2006] NZSC 24

BETWEEN	JOCELYN MARY IMMS Applicant
AND	CRAIG WESLEY GUNSON AND JOCELYN MARY IMMS (AS TRUSTEES OF THE ESTATE OF VJERKOSLAV IVAN BANICEVICH) First Respondents
AND	CAMERON BANICEVICH AND DENE BANICEVICH Second Respondents
AND	YVETTE BANICEVICH AND DONNA DOE Third Respondents

Court: Elias CJ, Blanchard and Anderson JJ

Counsel: A G Stuart for Applicant
S P Bryers for First Respondents
M C Black for Second Respondents

Judgment: 4 April 2006

JUDGMENT OF THE COURT

A. The application for leave to appeal is dismissed.

B. Costs to the second respondents, payable by the applicant, of $2,500.

REASONS

[1] This is an application for leave to appeal from a judgment of the Court of Appeal. This Court has considered the written submissions in support of and in opposition to this application and the submissions on behalf of the third respondents indicating that they abide this Court's decision.

[2] The litigation is concerned with the estate of the late Vjerkoslav Ivan Banicevich who farmed land at Clarks Bay, Te Kopuru in Northland. The applicant, a daughter of the deceased, sought a variation of the will trusts under s 64 of the Trustee Act 1956 with a view to seeing three sections subdivided off the family farm for the benefit of herself and her two sisters. She also brought a Family Protection Act claim which failed in the High Court. The Court of Appeal set aside directions which the High Court had made under s 64.

[3] The Court of Appeal was of the opinion that the significant change to the will was more than mere management or administration, and that while it may well be in the best interests of the daughters it was arguably not in the best interests of the grandson beneficiaries.

[4] The circumstances of this case are very unusual. Their singularity leaves no room, in our opinion, for the applicant to contend that the appeal involves a matter of general or public importance or a matter of general commercial significance. Nor are we persuaded that a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard. The dismissal of the Family Protection Act claims undermines that ground.

[5] The conclusions expressed in the previous paragraph must lead to the dismissal of this application. As well, however, the applicant would have insurmountable jurisdictional hurdles. Section 64(1) allows the Court to make orders of the type mentioned herein only where such transaction is expedient in the management or administration of trust property or would be in the best interests of the persons beneficially interested under the trust. The relevant property is not the farm itself but the A shares and one-third of the B shares in the family company

which holds title to the property. The trustees' obligations under the will are to sell those shares, either to the second respondents in terms of the option, or to other purchasers if the option is not taken up. There is plainly ample power for the trustees to discharge that obligation without intervention by the Court. And, as the Court of Appeal noted, such intervention must be for the purposes of management or administration of the shares or such as would be in the best interests of the beneficiaries. It would be difficult indeed for the applicant to show relevant necessity or expediency to rewrite the will in the way suggested by the applicant.

Solicitors:
Webster Malcolm & Kilpatrick, Warkworth for Applicant
Pegg Ayton Gordon, Dargaville for First Respondents
Hammonds, Dargaville, for Second Respondents