

IN THE SUPREME COURT OF NEW ZEALAND

**SC 61/2006
[2006] NZSC 82**

BETWEEN YI HUA JIAO & ORS
Applicants

AND IVAN BARGE
Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: Applicants in Person
M J Fisher for Respondent

Judgment: 2 October 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2,500 to the respondent. The application for leave to adduce further evidence is also dismissed.

REASONS

[1] The applicants have sought leave to appeal against the Court of Appeal's dismissal of determinations by the High Court that (a) the applicants induced a breach of a contract of sale and purchase of land to which the respondent, Mr Barge, was a party as purchaser and (b) the applicants were parties to an unlawful means conspiracy, causing loss to Mr Barge. An inquiry into damages has been ordered by the High Court.

[2] The proposed appeal concerns factual issues only. It raises nothing of general or public importance. Furthermore, the applicants appear to wish to run arguments not actually advanced in the Court of Appeal. They say there was never a binding agreement between the vendor of the land, Freeport, and Mr Barge because the person who signed on behalf of Freeport, Ms Chu, did not hold a valid power of

attorney from Freeport. Alternatively, the applicants wish to argue that they had no reason to know when entering into the arrangements to buy the Bank of New Zealand's mortgage and precipitate the default by Freeport, that Ms Chu had no authority to bind the company when she signed the agreement on its behalf.

[3] There is an application for the Court to admit further evidence. It is neither fresh nor cogent. Indeed, the evidence appears to confirm that, whether or not Ms Chu held a valid power of attorney from the company at the relevant time, she was nevertheless acting as an authorised agent of the directors of the company. Whilst it is necessary for a contract for the sale of land, or a memorandum of its terms, to be in writing, there is no requirement that an agent who is authorised to sign on behalf of the party has herself to have been appointed in writing.¹ So a continuing oral authority from the directors of the company would have been enough to enable her to bind it by signing the contract document.

[4] The suggestion that the applicants had no reason to think that there was a valid contract can be met with the rather obvious response "Why then did you bother to go through the elaborate arrangements which the Court of Appeal fairly described as a spider's web?" It is implausible.

[5] None of the criteria for leave in s 13 of the Supreme Court Act 2003 has been met.

Solicitors:
Murdoch Price, Papatoetoe for Applicants
Castle Brown, Auckland for Respondent

¹ *Maclean v Dunn* (1828) 4 Bing 722; 130 ER 947; *Auckland Bus Co Ltd v New Lynn Borough* [1965] NZLR at 553 (North P), addressing s 2(2) Contracts Enforcement Act 1956.