IN THE SUPREME COURT OF NEW ZEALAND

SC 75/2006
[2006] NZSC 96

BETWEEN	HAYDEN MATTHEW JOHNSTON AND EARNSCLEUGH VINEYARDS LIMITED Applicants
AND	SCHIST MOUNTAIN ORCHARDS LIMITED Respondent

Court: Tipping, McGrath and Anderson JJ

Counsel: L Anderson for Applicants
C S Withnall QC for Respondent

Judgment: 13 November 2006

JUDGMENT OF THE COURT

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1. **The application for leave to appeal is dismissed.**

2. **The applicants are to pay the respondent costs in the sum of $2,500 plus disbursements to be fixed if necessary by the Registrar.**

REASONS

[1] Mr Johnston and Earnscleugh Vineyards Ltd seek leave to appeal from the decision of the Court of Appeal in a contractual dispute between them and Schist Mountain Orchards Ltd. The essence of that dispute concerns a right of way which was to be established in the course of a subdivision of land. The applicants assert that leave should be granted because points of law of general or public importance

are engaged. These points are expressed in counsel's submissions in support of the application as being:

> 1. Does a subdivision that contains a 10 metre right of way for the benefit of Lot 2 comply with clause 16.1(a) of the contract?
>
> 2. Does the Grantor of a right of way that is required to include the standard statutory conditions have the ability to restrict the use of the right of way to the formed carriageway such that any additional width is "of no moment"?
>
> 3. Did the Court of Appeal meet the legal requirement to give sufficient reasons to enable the parties to understand why it determined the subdivision complied with clause 16.1(a) of the contract?

[2] The applicants contend that the first point involves a question concerning the implication of terms into contracts, which seems very doubtful in view of the fact that the Court of Appeal did not deal with the case as one of implied terms but rather as one of interpretation. However, whether expressed as a question of contractual content or of interpretation, the issue is essentially case specific and of no general or public importance.

[3] The second suggested point of law is not, in our view, one of general or public importance. It relates essentially to how this particular contract should be interpreted. Although expressed in general terms, the point is really one which is no more than specific to the present dispute. To the extent that the point might possibly have wider and more general ramifications, we do not consider that it is of such general or public importance as to justify the grant of leave.

[4] The third point concerning the reasons given by the Court of Appeal is not, in our view, fairly arguable. Hence, leave should not be granted upon it.

[5] In addition to the three points identified above, the applicants assert a substantial miscarriage of justice and that the issues arising are of general commercial significance. We find, however, that there cannot here be any suggestion of a miscarriage of justice of the kind identified in the decision of this Court in *Junior Farms Ltd v Hampton Securities Ltd (in liq)*.[1] There this Court

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1 [2006] 3 NZLR 522n.

described what was required for leave to be granted on an allegation of substantial miscarriage of justice in a civil case:[2]

> Rather, the miscarriage ground must in civil appeals be taken to have been intended to enable the Court to review the decision of the Court of Appeal on questions of fact, or on questions of law which are not of general or public importance, in the rare case of a sufficiently apparent error, made or left uncorrected by the Court of Appeal, of such a substantial character that it would be repugnant to justice to allow it to go uncorrected in the particular case.

[6] We do not consider this case approaches that requirement. Nor can it be said that the case raises any matter of general commercial significance. The reality is that it involves a dispute and issues particular to the parties and the specific facts of the case. The applicants have not established any ground for leave within s 13 of the Supreme Court Act 2003. The application must therefore be dismissed with costs of $2,500, plus disbursements, to the respondent.

Solicitors:
Blake Horder Gowing, Wanaka for Applicants
Webb Farry, Dunedin for Respondent

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2 At [5].