IN THE SUPREME COURT OF NEW ZEALAND

SC 38/2006
[2006] NZSC 60

BETWEEN	JUNIOR FARMS LIMITED Appellant
AND	HAMPTON SECURITIES LIMITED (IN LIQUIDATION) First Respondent
AND	ACCENT MANAGEMENT LIMITED Second Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: S P Bryers for Appellant
M J Koppens for Second Respondent

Judgment: 16 August 2006

JUDGMENT OF THE COURT

The applications for leave to appeal by both the appellant and the second respondent are dismissed.

REASONS

[1] Junior Farms Ltd and Accent Management Ltd both seek leave to appeal. We have not been persuaded that either of the proposed appeals is properly within s 13(2) of the Supreme Court Act 2003.

[2] The dispute concerns the amount payable by a purchaser to a vendor under an agreement for sale of land by way of adjustment of price after the actual boundaries and area of the land were known.

[3] Junior Farms expressly admits in its written submissions that no principle of law or matter of general or public importance is involved in its appeal. It argues simply that there has been a substantial miscarriage of justice because, it contends, the decision of the Court of Appeal concerning the calculation of the price was based on inaccurate assumptions.

[4] The miscarriage ground is of limited application in civil cases. It cannot have been intended by the legislature that the Supreme Court, when hearing an appeal in a civil case which has already been the subject of a first, error-correction, appeal (and if coming from an inferior court or tribunal has already been the subject of two or more appeals), is to embark on a further exercise of error correction. That is simply not the role of an ultimate appellate court, as can be seen from the practice and jurisprudence of comparable courts in the common law world.

[5] 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] The factual position in the present case is complicated and the issue raised by the proposed appeal of Junior Farms is capable of differing analyses. We are not persuaded that, if any error exists in the way in which the Court of Appeal determined the matter, it is so apparent and substantial as to bring the appeal within the miscarriage limb of s 13(2). Furthermore, although the amount in dispute is quite large, it is relatively small in comparison to the value overall of the transaction.

[7] The proposed appeal by Accent Management, although put as if it engaged questions of law, is in reality simply an attempt to re-litigate factual contentions.

[8] We are accordingly dismissing both applications.

Solicitors:
Martelli McKegg Wells & Cormack, Auckland for Appellant
Wynyard Wood, Auckland for Second Respondent