

IN THE SUPREME COURT OF NEW ZEALAND

**SC 62/2006
[2006] NZSC 92**

BETWEEN KEITH HUGH NICOLAS BERRYMAN
AND MARGARET BERRYMAN
Applicants

AND THE NEW ZEALAND DEFENCE
FORCE
Respondent

Court: Elias CJ, Blanchard and Anderson JJ

Counsel: M Alice for Applicants
H S Hancock for Respondent

Judgment: 31 October 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed

REASONS

[1] The applicants seek leave to appeal against dismissal by the Court of Appeal of their appeal from an award of costs against them in the High Court. We are satisfied that no proper basis exists for this Court to hear the proposed appeal.

[2] The criteria in s 13 of the Supreme Court Act 2003 are not met. What the applicants are seeking is a further review of an exercise of discretion by the High Court Judge which has already been reviewed by the Court of Appeal. That Court concluded, as was fully open to it, that the Judge's decision not to take into account the considerations on which Mr and Mrs Berryman relied was correct. Any question of actual or alleged prior misconduct by the Defence Force was simply not relevant to the costs decision, which related to a failed application by the Berrymans for non-

party discovery. The correctness of the Judge's decision not to order discovery and its antecedents were not in issue.

Solicitors:
Moody & Co, Feilding for Appellants
Crown Law Office, Wellington