

IN THE SUPREME COURT OF NEW ZEALAND

**SC 71/2005
[2006] NZSC 5**

BETWEEN	PORTAGE LICENSING TRUST Appellant
AND	AVONDALE HOTEL NO. 1 LIMITED First Respondent
AND	PENINSULA MOTOR HOTEL LIMITED Second Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: D R Bigio for Appellant
G J Kohler for Respondents

Judgment: 1 March 2006

JUDGMENT OF THE COURT

- A. The application for leave to appeal is dismissed.**
- B. The appellant is to pay the respondents costs in the sum of \$2,500.00 plus disbursements, to be settled if necessary by the Registrar.**

REASONS

[1] This application for leave to appeal concerns which party had the obligation to replace certain chattels in a leased hotel. The appellant has endeavoured to persuade the Court that points of law of general or public importance arise. The appellant suggests that this is so primarily in relation to the question of when and on what basis it is appropriate to imply terms into a contract.

[2] Having carefully considered the appellant's submissions, we find ourselves in agreement with the respondents that no qualifying point of law truly arises. Nor do we consider the appeal involves any matter of general commercial significance. At the most the case raises the application of reasonably settled principles to very complex and particular facts. In short, it is a case which turns on its own mix of facts and circumstances. The determination of the Court of Appeal will have no significant precedent value, either in legal terms or in commercial terms.

[3] The appellant has not satisfied us that it is necessary in the interests of justice for this Court to hear and determine the proposed appeal, that being the criterion set out in s 13 of the Supreme Court Act 2003. It is for these reasons that the application is dismissed, with costs as noted above.

Solicitors:
Ellis Gould, Auckland for Appellant
Wadsworth Ray, Auckland for Respondents