

IN THE SUPREME COURT OF NEW ZEALAND

**SC 48/2007
[2007] NZSC 79**

BETWEEN	GEORGE SOCRATES MAMFREDOS First Applicant
AND	GEORGE SOCRATES MAMFREDOS AS TRUSTEE OF THE SAMRAYAT FAMILY TRUST Second Applicant
AND	ANNABELLE JANE MAMFREDOS Third Applicant
AND	HERBERT EQUITIES LIMITED Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: P F Chambers for Applicants
R J Katz QC and S W B Foote for Respondent

Judgment: 26 September 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2500 for the respondent.

REASONS

[1] The applicants seek leave to appeal against a judgment of the Court of Appeal which ordered that the respondent may lodge a fresh caveat against land. The final High Court judgment, which was reversed by the Court of Appeal, had dismissed applications by the respondent for orders that would have prevented an earlier caveat over the land from lapsing.

[2] The underlying dispute relates to a proposed loan transaction. One of the applicants, Mr Mamfredos, through another applicant, his family trust, agreed to act as a broker who would seek to raise an overseas sourced loan of US\$100m for the respondent Herbert Equities Ltd. For the application to proceed a loan fee of US\$1m had to be paid to the overseas bank and the applicants agreed to advance that sum to the respondent to be repaid in instalments in a separate transaction.

[3] The overseas loan did not proceed but the respondent did make payments totalling NZ\$660,826 to the applicants. The Court of Appeal was hampered by a lack of documentary evidence from the applicants concerning arrangements for the overseas loan. It concluded that the evidence it did have indicated that US\$100,000 of this sum (NZ\$160,000) was a commitment fee on the loan which the lender would be entitled to retain. Other lesser sums would also, for various reasons, not be repayable to the respondent, but after allowing for these matters, there seemed to the Court of Appeal to be no reason why the respondent should not be refunded NZ\$463,150.

[4] The respondent sought to maintain a caveat over the land covered by CT 114751. This was on the basis that it was more likely than not that the applicants had applied funds, which should have been repaid to the respondent, to the purchase of land that was included in land covered by that title. In considering this issue, a particular concern for the Court of Appeal was the lack of any independent evidence from the applicants concerning how the trust had funded the purchase of the land in question. The Court of Appeal was, however, satisfied that the timing of payments by the respondent to the trust made it arguable that money may have been paid by one or other of the applicants into property that would be subject to the proposed caveat. The Court reached the conclusion, contrary to that of the High Court, that the trust may have used the respondent's funds as the respondent had alleged, and that the Court of Appeal should proceed on that basis. Accordingly, the Court allowed the appeal and made an order permitting the respondent to lodge a fresh caveat.

[5] The application for leave to appeal contends that the Court of Appeal's decision is wrong and that the Court has taken irrelevant matters into account in

allowing the appeal against the High Court decisions. In his submissions on the leave application, the applicants' counsel makes a detailed comparison of the Court of Appeal's factual findings in relation to those of the High Court. Counsel for the applicants also argues that in reversing the High Court judgment, the Court of Appeal failed to apply normal appellate principles in relation to appeals against findings of fact.

[6] The issue before the Court of Appeal was whether there was an arguable case to justify the caveat and its continuation. The nature of the application was essentially one of interim relief. It was not suggested that, if there were an arguable case that monies that should have been refunded were applied by the applicants to purchase the land, there were also special circumstances going to the balance of convenience, which would favour refusal of the respondent's application.

[7] The issue we are required to address is whether it is necessary in the interests of justice for the Court to hear and determine the proposed appeal. The substance of the issues raised by the application to bring an appeal to this Court concern the difference in the approach taken to the evidence by the Court of Appeal from that of the High Court Judge. These issues are, however, essentially factual in nature and they do not involve any matter of general or public importance or general commercial significance. While the Court of Appeal took a different view of what the evidence indicated to that of the High Court, we see nothing that indicates that an arguable error arises from the Court of Appeal's appellate approach or its treatment of the evidence, including the limited evidence provided by the applicants. Nor do we see any indication of a sufficiently apparent error in the Court of Appeal's judgment that would enable the applicants to rely on this Court's decision in *Junior Farms Ltd v Hampton Securities Ltd* in support of the applicants' contention that a substantial miscarriage of justice may have occurred.¹ As mentioned, the Court of Appeal judgment is essentially in the nature of interim relief in a case in which the parties' rights will be determined on full evidence at trial and there is no suggestion of special circumstances of prejudice resulting from allowing the respondent to caveat the title covering the land concerned.

¹ [2006] 3 NZLR 522n.

[8] In those circumstances we conclude that there is nothing meeting the statutory requirements in relation to the interests of justice that would warrant us granting leave to appeal. The application is dismissed.

Solicitors:

J Bioletti, Auckland for Applicants

Fletcher Law, Hamilton for Respondent