

IN THE SUPREME COURT OF NEW ZEALAND

**SC 23/2007
[2007] NZSC 44**

BETWEEN	WAITARA LEASEHOLDERS ASSOCIATION INCORPORATED Applicant
AND	NEW PLYMOUTH DISTRICT COUNCIL Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: D J King and S Hucker for Applicant
D J Goddard QC and J Shackleton for Respondent

Judgment: 20 June 2007

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed with costs of \$2,500 to the respondent.

REASONS

[1] The applicant is seeking leave to appeal against a decision of the Court of Appeal which reversed decisions of the High Court.

[2] The applicant is seeking to have set aside a decision of the Council to enter into a conditional sale to the Crown of land vested in the Council. In our view, whether or not the Court of Appeal was right to conclude that the land was held on a statutory trust, rather than for charitable purposes, there is a fundamental difficulty with the proposed appeal which means that it could not succeed. That difficulty faced by the applicant is that it would be a term of the contract with the Crown that the land would not be transferred by the Council to the Crown until authorising legislation has been passed by Parliament. Even if the land were held upon trust in

the way claimed by the applicant, contrary to the view of the Court of Appeal, it would always be open to the Council to approach Parliament for legislation authorising a departure from the terms of the trust. It therefore cannot possibly be unlawful for the Council to resolve to enter into a contract with the Crown which is subject to the passage of legislation of that kind.

Solicitors:

Dennis King Law, New Plymouth, for Applicant

Simpson Grierson, Wellington for Respondent