IN THE SUPREME COURT OF NEW ZEALAND

SC 48/2008
[2008] NZSC 88

BETWEEN	MICHAEL SPACKMAN Applicant
AND	THE QUEENSTOWN LAKES DISTRICT COUNCIL First Respondent
AND	RAYLENE JELLEY, WILLIAM JELLEY AND LYALL WILLIAM JELLEY Second Respondents

Court: Blanchard, Tipping and McGrath JJ

Counsel: C R Carruthers QC and P J Page for Applicant
R S Cunliffe for First Respondent
F B Barton for Second Respondents

Judgment: 24 October 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of $2,000 to the first respondent and of $2,000 to the second respondents.

REASONS

[1] The proposed appeal challenges an exercise of discretion by the Court of Appeal and is brought slightly out of time because of an error by the applicant's solicitors.

[2] The Court of Appeal held that the first respondent, the Council, erred in treating a resource consent application by the second respondents as made in respect of a controlled, rather than in a discretionary, activity and in granting that application

without notification. The High Court Judge revoked the approval in respect of one lot of the proposed subdivision and ordered an amendment to the consent notice intended to be noted against the title of another lot and relating to any building to occur on that lot.

[3] The Court of Appeal accepted that the High Court Judge was wrong in both respects. He should not have severed the consent because that denied the applicant, a neighbour, the chance of making submissions to the Council about the boundaries of the subdivision which might influence where building platforms could be located within the lots of the subdivision. Furthermore, the Court of Appeal concluded, the Judge had no jurisdiction to amend the consent notice by imposing an additional condition. He should simply have revoked the consent and sent the application back to the Council for reconsideration.

[4] The Court of Appeal decided, however, that notwithstanding the identification of these errors of the Judge, it would in the exercise of its residual discretion decline to remit the matter for rehearing by the Council. It therefore dismissed the appeal by Mr Spackman. Some factors influencing the Court of Appeal's exercise of discretion were the delays which had occurred (three years since the Council's decision), the financial impact on the second respondents and the failure by Mr Spackman to make his position clear to the Judge in the High Court, namely that he was seeking an order returning the whole matter to the Council. The Court of Appeal also took into account the opinion it had formed that it was unlikely that, in the end, submissions from Mr Spackman would influence the Council's decision.

[5] We are dismissing the application for leave because we are not persuaded that the applicant has a real prospect of overcoming the hurdle of showing that the Court of Appeal, in exercising its discretion, either erred in principle or was plainly wrong to refuse relief to Mr Spackman. Furthermore, in the unusual circumstances of this case, any decision by this Court would be unlikely to have precedent value. The proposed appeal therefore does not give rise to any question of public or general importance.

Solicitors:
Mike Garnham, Wellington for Applicant
MacAlister Todd Phillips, Queenstown for First Respondent
Anderson Lloyd, Dunedin for Second Respondents