

IN THE SUPREME COURT OF NEW ZEALAND

**SC 64/2007
[2008] NZSC 94**

BETWEEN SAXMERE COMPANY LIMITED
 Appellant

AND THE ESCORIAL COMPANY LIMITED
 Second Appellant

AND RICHARD KING
 Third Appellant

AND RUSSELL STEWART EMMERSON
 AND FOREST RANGE LIMITED
 Fourth Appellants

AND WOOL BOARD DISESTABLISHMENT
 COMPANY LIMITED
 First Respondent

AND THE ATTORNEY-GENERAL
 Second Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: C C M Owen and S J Grey for Appellants
 J S Kós QC and J L Bates for First Respondent

Judgment: 7 November 2008

JUDGMENT OF THE COURT

- A Leave to appeal is granted.**
- B The approved ground is whether the decision of the Court of Appeal in *Wool Board Disestablishment Co Ltd v Saxmere Co Ltd and Others* [2007] NZCA 349 should be set aside because of a reasonable apprehension of bias resulting from Wilson J's relationship with Mr Galbraith QC, counsel for the appellant in that Court.**

REASONS

[1] We have no doubt that despite the earlier refusal of leave, sought only on grounds unrelated to the ground now raised, this Court has jurisdiction to entertain a second application in the circumstances of this case.

[2] The appellants have deposed that they were unaware of the full details of the alleged relationship between the Judge and counsel. The proposed appeal, though dependent on factual matters being established, raises important questions concerning the administration of justice in New Zealand. If the arguments intended to be made by the appellants succeed there would be an appearance of a miscarriage of justice. It is therefore appropriate that this Court should hear and determine the proposed appeal on the approved ground. That ground encompasses both the alleged apprehension of bias and any questions concerning possible waiver on part of the appellants.

[3] In the circumstances the appellants' lateness in the bringing of the present application is excusable.

[4] It is preferable, at least in present circumstances, that the matter be determined by this Court rather than in the Court of Appeal. It also seems likely that the appellants would bring the matter back here if it were referred to the Court of Appeal and that Court declined to set aside its judgment. Finality on the questions now in issue can be achieved more expeditiously if this Court hears the proposed appeal. Together these factors outweigh the theoretical consideration that the first respondent would not then be able to bring an appeal from an adverse ruling.

[5] Any further affidavits in support of the appeal are to be filed and served by 21 November 2008. Any further affidavits in reply are to be filed and served within 10 working days of the service of the appellants' affidavits.

[6] Having regard to the procedure adopted in *Man O' War Station Ltd v Auckland City Council*,¹ the Court then proposes to afford Wilson J the opportunity of making a written statement to the Court if he wishes to do so.

[7] The Registrar is not to make a fixture until directed to do so by the Court.

[8] Lastly, we should add that if the appellants were to succeed on the approved ground it is unlikely this Court would hear the substantive question which was before the Court of Appeal, having earlier decided that it does not meet the leave criteria under the Supreme Court Act 2003.² In such circumstances the appropriate course would seem to be for this Court to direct that the matter be re-heard in the Court of Appeal.

Solicitors:
Sue Grey, Nelson for Appellants
Quigg Partners, Wellington for First Respondent

¹ [2001] 1 NZLR 553.
² [2007] NZSC 88.