

IN THE SUPREME COURT OF NEW ZEALAND

**SC 16/2008
[2008] NZSC 35**

BETWEEN MEDIA 1 LIMITED
 Applicant

AND N W SHANKS AND WILSON MCKAY
 TRUSTEE COMPANY LIMITED AND
 ORS
 Respondents

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: M A Gilbert for Applicant
 M G Ring QC for Respondents

Judgment: 7 May 2008

JUDGMENT OF THE COURT

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

REASONS

[1] The applicant has sought leave to appeal against a decision of the Court of Appeal concerning whether a notice of intention to terminate has been validly given in terms of a clause in a lease. The Court of Appeal's decision turned on the interpretation of a letter containing the alleged notice written by the respondents' solicitor. Disagreeing with the High Court, the Court of Appeal concluded that, in the particular context, a reasonable recipient of the letter would have taken the lessor to have been giving notice of intention to terminate and not merely giving what the Court of Appeal called gratuitous advice of a particular right the lessor enjoyed under the lease and which it might choose to exercise in future.

[2] Relating as it does to the interpretation of the words of a particular letter, the proposed appeal does not raise any question of general or public importance or general commercial significance. The Court of Appeal approached the matter in accordance with settled principle. The difference between the two Courts simply demonstrates that there is room for argument about which view of the letter is correct. This is not a case in which it can be said that the view asserted for the applicant is plainly correct, and that accordingly a miscarriage of justice has occurred. The criteria for leave are not met.

Solicitors:
Gilbert Walker, Auckland for Applicant
Richard Allen, Auckland for Respondents