

IN THE SUPREME COURT OF NEW ZEALAND

**SC 5/2008
[2008] NZSC 18**

BETWEEN PHILIP JOSEPH FAVA
 Applicant

AND EKHLAS ZAGHLOUL & ORS
 Respondents

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: Applicant in person
 N S Gedye for Respondents
 G A D Neil for Official Assignee

Judgment: 2 April 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Fava, seeks leave to appeal from the decision of the Court of Appeal which upheld an order of the High Court declining to approve a proposal which he had made under the Insolvency Act 1967 for a compromise with his creditors. The High Court Judge found that the proposal, despite its acceptance by the majority of creditors, was not reasonable. The Court of Appeal came to the same conclusion.

[2] One of the grounds upon which Mr Fava seeks leave to appeal to this Court is that the Court of Appeal based its decision on a proposition which he had no opportunity to address. Whatever may be the force of that argument, we are of the view that the High Court and the Court of Appeal were both fully entitled to come to

the conclusion that the proposal was not reasonable. There is no point of principle involved. The case is entirely fact-specific. Mr Fava has not satisfied us that it is necessary in the interests of justice for this Court to hear and determine the proposed appeal.

[3] None of the criteria set out in s 13(2) of the Supreme Court Act 2003 has been fulfilled. The appeal does not involve any matter of general or public importance. There is no basis for concluding that a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard. Nor does the proposed appeal involve any matter of general commercial significance.

[4] For these reasons the application must be dismissed.

Solicitors:
Hornabrook Macdonald, Auckland for Respondents
Meredith Connell, Auckland for Official Assignee