IN THE SUPREME COURT OF NEW ZEALAND

SC 26/2009
[2009] NZSC 51

BETWEEN	TFAC LIMITED AND ORS Applicants
AND	SUSAN ELIZABETH DAVID AND ANOR Respondents

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: D Connor for Applicants
C Walker for Respondents

Judgment: 26 May 2009

JUDGMENT OF THE COURT

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

REASONS

[1] The proposed appeal concerns an alleged breach of s 9 of the Fair Trading Act 1986. In the High Court Baragwanath J found that there was misleading or deceptive conduct when the defendant represented to the applicants that the success of an Australian franchise system was transferable to New Zealand so that the applicants could rely on the system and their proposed acquisition of a regional master franchise would have solid prospects for them. The Court of Appeal, in contrast, found that what had been said was merely an expression of opinion; that there was nothing to suggest it was not genuinely held; and that there was a reasonable basis for the opinion because the applicants had not shown that there was

some feature of the New Zealand market which meant that what had succeeded in Australia was unlikely to succeed in New Zealand.

[2] The applicants contend that the Court of Appeal erred in law in approaching the matter in a different way from the trial Judge because the trial Judge had found that the respondents had said that the system was proven, which the applicants say was a representation of existing fact.

[3] However, assuming without necessarily accepting, that the applicant has correctly identified an error of law by the Court of Appeal, it would not involve any question of general or public importance. It would be simply an error in the application of settled law to the facts of the particular case.

[4] The applicants also say that there has been a substantial miscarriage of justice but we are not persuaded. The applicants appear to have known very well that the franchise system had only recently begun to operate in New Zealand. The statements made by the defendants were, to the applicants' knowledge, referring to Australian promotional material. It was even necessary for the applicants to go to Australia to observe the Australian franchise operation because there were no New Zealand regional master franchises to observe. It therefore cannot be said that the Court of Appeal has made an apparent error of such a substantial character that it would be repugnant to justice to allow it to go uncorrected in the particular case.[1]

[5] The applicants' proposed reliance on s 22 of the Act would encounter the same difficulties as they face in their s 9 claim.

[6] The criteria for a grant of leave to appeal are not met.

Solicitors:
Jones Law, Auckland for Applicants
Gilbert Walker, Auckland for Respondents

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1 *Junior Farms Ltd v Hampton Securities Ltd* [2006] 3 NZLR 522n.