

IN THE SUPREME COURT OF NEW ZEALAND

**SC 27/2009
[2009] NZSC 52**

BETWEEN	IVAN VLADIMIR JOSEPH ERCEG Applicant
AND	BALENIA LIMITED Respondent

Court: Blanchard, McGrath and Wilson JJ

Counsel: J Billington QC and L Ponniah for Applicant
G J Kohler for Respondent

Judgment: 27 May 2009

JUDGMENT OF THE COURT

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

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal upholding a judgment of the High Court which ordered specific performance by the applicant of an agreement to purchase three yachts.

[2] The proposed grounds of appeal are concerned with whether the applicant was able to rely on a solicitors' approval clause under which named solicitors had to be satisfied that the respondent had clear title to the yachts. The applicant ceased to retain the solicitors named in the agreement for that purpose. A further ground concerned whether specific performance should have been ordered given what was said to be the likelihood of disputes over the respondent's clear title.

[3] We are satisfied that the main authority cited by the applicant, which relates to cancellation of a contract and not to an application for an order for specific performance, is not in point and that there is no prospect of the applicant succeeding in an appeal on any of the proposed grounds for appeal.

[4] Accordingly, leave to appeal is refused.

Solicitors:

Corban Revell, Waitakere City for Applicant
Burton and Co, Auckland for Respondent