

IN THE SUPREME COURT OF NEW ZEALAND

**SC 90/2009
[2009] NZSC 127**

BETWEEN	CHESTERFIELDS PRESCHOOLS LIMITED First Applicant
AND	DAVID JOHN HAMPTON Second Applicant
AND	CHESTERFIELDS PARTNERSHIP Third Applicant
AND	CHESTERFIELDS PRESCHOOLS PARTNERSHIP Fourth Applicant
AND	ANOLBE ENTERPRISES LIMITED Fifth Applicant
AND	THE COMMISSIONER OF INLAND REVENUE Respondent

Court: Tipping, McGrath and Wilson JJ

Counsel: Applicants in person
M S R Palmer and E Aspey for Respondent

Judgment: 8 December 2009

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants, jointly and severally, are ordered to pay the respondent the sum of \$3,000 plus disbursements, to be fixed if necessary by the Registrar.

REASONS

[1] The applicants seek leave to appeal from an interlocutory decision of the Court of Appeal in which that Court, in its discretion, stayed the execution of orders for costs which the High Court had made against the respondent Commissioner in judicial review proceedings between the parties.

[2] Leave to appeal to this Court should be refused because the applicants have not established that a grant of leave is necessary in the interests of justice.¹ The Court of Appeal's decision was made in the particular context of the present case. No matter of general or public importance or of general commercial importance is involved. Nor is there any appearance of a miscarriage of justice as a result of the applicants being unable to enforce the costs orders made in their favour by the High Court, pending the Court of Appeal's determination of the respondent's substantive appeal.

[3] Furthermore, s 13(4) of the Supreme Court Act provides that this Court must not give leave to appeal from an order made by the Court of Appeal on an interlocutory application unless it is necessary to do so in the interests of justice. That has not been shown in this case. If anything, it would be unjust to the Commissioner to allow the costs orders against him to be enforced before his substantive appeal is determined.

Solicitors:
Crown Law Office, Wellington for Respondent

¹ Sections 13(1) and 13(2) of the Supreme Court Act 2003.