IN THE SUPREME COURT OF NEW ZEALAND

SC 82/2010
[2010] NZSC 131

BETWEEN	CHURCHILL GROUP HOLDINGS LIMITED AND ORS Applicants
AND	ARAL PROPERTY HOLDINGS LIMITED AND DAVID LEUNG Respondents

Court: Blanchard, McGrath and William Young JJ

Counsel: Applicant Mr Fava in person
J D McBride for Respondents

Judgment: 3 November 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of $2500 to the respondents.

REASONS

[1] The applicants were ordered by the High Court to pay a very substantial sum in costs to the respondents after a proceeding brought by the applicants resulted in a default judgment against them. Mr Fava sought to have that judgment stayed pending an appeal. Venning J, who appears to have had no previous involvement in the litigation, refused to grant a stay.[1] The Court of Appeal dismissed an appeal against that refusal.[2] A Judge of this Court refused to grant interim relief and the application for leave was then discontinued.

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1 *Churchill Group Holdings Ltd v Aral Property Holdings Ltd* HC Auckland CIV-2001-404-2302, 27 January 2010.

2 *Churchill Group Holdings Ltd v Aral Property Holdings Ltd* [2010] NZCA 88.

[2] Now the applicants have sought to make a collateral attack on Venning J's decision despite the fact that the basis for their stay application has been considered twice on appeal and found wanting. They have contended that Venning J should have recused himself because his daughter is a solicitor in the employ of the respondents' solicitors. This argument was advanced in an application to the Court of Appeal seeking recall of its stay decision. Not surprisingly, in view of the fact that the Judge's daughter had nothing to do with the litigation and the applicants' arguments depended on wild speculation without any grounding in fact, the Court of Appeal dismissed the recall application.[3]

[3] The reasons given by the Court of Appeal are entirely convincing. The proposed appeal to this Court against its refusal to recall its stay judgment is so unmeritorious that it has no prospect of succeeding.

[4] We add that, given we are unpersuaded by the substantive merits of the applicants' argument, there is no point in proceeding to consider their submissions concerning the conduct of counsel who appeared for the respondents at the High Court hearing, on which we make no comment.

Solicitors:
Bell Gully, Auckland for Respondents

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3 *Churchill Group Holdings Ltd v Aral Property Holdings Ltd* [2010] NZCA 335.