

IN THE SUPREME COURT OF NEW ZEALAND

SC 121/2011
[2012] NZSC 5

BETWEEN	CHRISTINE MARY HERRON First Applicant
AND	CHRISTINE MARY HERRON AS TRUSTEE OF THE HERRON TRUST Second Applicant
AND	WESTPAC NEW ZEALAND LIMITED Respondent

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: C T Patterson and E J Grove for Applicants
G M Sandelin and M D Pascariu for Respondent

Judgment: 17 February 2012

JUDGMENT OF THE COURT

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

REASONS

[1] The High Court has entered summary judgment against the applicant on two guarantees.¹ The Associate Judge considered that Westpac had established that Mrs Herron had no defence. He concluded that her claim that the guarantees had been released by Westpac was unsubstantiated. It was unsupported by reference to contemporary written documents.

[2] In dismissing Mrs Herron's appeal² the Court of Appeal applied settled principles, as had the Associate Judge. The Court of Appeal considered that the

¹ *Westpac New Zealand Ltd v Lakov Ltd* HC Auckland CIV-2009-404-5046, 9 July 2010.

² *Herron v Westpac New Zealand Ltd* [2011] NZCA 544.

Associate Judge had not erred in his conclusion and gave its reasons for coming to that view.

[3] The proposed appeal to this Court raises no arguable question of general principle. The applicant wishes to pursue an argument that Westpac had not satisfied its onus of proving the lack of an arguable defence in the absence of any evidence from the particular bank officer who dealt with the transactions of which the guarantees were part. That is obviously an issue related to the particular facts of the case. The Courts below took the view that it was unnecessary for Westpac to do this because the assertions made by Mrs Herron and her husband were inherently implausible and were unsupported, and indeed contradicted, by the contemporary documentation. That was a view which was well open to those Courts. There is certainly no appearance that there may have been a miscarriage of justice.

[4] The other proposed argument is that the High Court improperly relied upon hearsay evidence, namely a statement by another bank officer, who had no direct knowledge of the transactions in question, that she had searched the files in Westpac's control and could confirm that no record of any agreement releasing the guarantees was contained in those files. The short answer to this point is that the bank officer's statement is not hearsay. She was merely stating what, from her own knowledge, the Bank's files contained or, more pertinently, did not contain.

Solicitors:
Graeme Skeates Law, Auckland for Applicants
Minter Ellison Rudd Watts, Auckland for Respondent