IN THE SUPREME COURT OF NEW ZEALAND

SC 15/2013
[2013] NZSC 35

BETWEEN	INDEPENDENT FISHERIES LTD AND CLEARWATER LAND HOLDINGS LTD Applicants
AND	MINISTER FOR CANTERBURY EARTHQUAKE RECOVERY First Respondent
AND	CANTERBURY REGIONAL COUNCIL, CHRISTCHURCH CITY COUNCIL, WAIMAKARIRI DISTRICT COUNCIL, SELWYN DISTRICT COUNCIL AND NEW ZEALAND TRANSPORT AGENCY Second Respondents

Court: William Young and Chambers JJ

Counsel: F M R Cooke QC, P A Joseph and P Steven for Applicants
M E Casey QC and K G Stephen for First Respondent
D J Goddard QC and J V Ormsby for Second Respondents

Judgment: 18 April 2013

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay by way of costs:

(a) the sum of $4,000 to the first respondent; and

(b) the sum of $4,000 to the second respondents –

plus, in each case, reasonable disbursements, to be fixed, if necessary, by the Registrar.

REASONS

[1] Independent Fisheries Ltd and Clearwater Land Holdings Ltd, the applicants, challenged in the High Court two decisions of the Minister for Canterbury Earthquake Recovery, the first respondent, made in October 2011 and relating to the use of land in greater Christchurch. The first inserted chapters 12A and 22 into the 1998 Canterbury Regional Policy Statement (the RPS). The second revoked Proposed Change 1 to the RPS. One of the effects of the Minister's decisions was to terminate certain appeals under the Resource Management Act 1991 which the applicants were advancing.

[2] The applicants' judicial review application succeeded in the High Court.[1] Chisholm J set aside the Minister's decisions.[2] The Minister and the named second respondents to this application, the Canterbury Regional Council, the Christchurch City Council, the Waimakariri District Council, the Selwyn District Council and the New Zealand Transport Agency, all appealed. The Court of Appeal dismissed their appeals.[3] The Court of Appeal's reasoning differed from Chisholm J's in certain respects but the end result was the same: the two impugned decisions remained set aside. It is important to note that neither the High Court nor the Court of Appeal ordered the Minister to reconsider his decisions. And, as a matter of fact, he has not.

[3] The applicants, notwithstanding their win in the Court of Appeal, seek leave to appeal. They prefer Chisholm J's reasoning to the Court of Appeal's. In their application for leave, they set out the judgment they seek from this Court. They seek a "judgment overturning the Court of Appeal's judgment on their claims of improper purpose, and unlawful interference with court proceedings, and seek the restoration of the judgment given by the High Court on these grounds of judicial review". In truth, they do not seek the overturning of the Court of Appeal's judgment at all. The Court of Appeal's judgment was the dismissal of the respondents' appeals. What the applicants seek is the reversal of some of the Court of Appeal's *reasons for judgment*

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1 *Independent Fisheries Ltd v Minister for Canterbury Earthquake Recovery* [2012] NZHC 1810.
2 At [209].
3 *Canterbury Regional Council v Independent Fisheries Ltd* [2012] NZCA 601.

and the restoration of the *reasons for judgment* of the High Court. That is quite a different thing.

[4] The respondents take the point that this Court has jurisdiction, under s 7 of the Supreme Court Act 2003, to hear and determine only appeals "against any decision" made in the Court of Appeal. A decision is different from the reasons leading to it. The respondents cite, among other cases, *Arbuthnot v Chief Executive of the Department of Work and Income*, where this Court said:[4]

> In short, there is no right of appeal against the reasons for a judgment, only against the judgment itself.

[5] The applicants cite in response *R v Gordon-Smith*.[5] That case does not assist the applicants on the jurisdiction point. In that case, Ms Gordon-Smith had been the recipient of a favourable pre-trial ruling by Fogarty J. The Crown appealed against that pre-trial ruling, using the case stated procedure provided by s 380 of the Crimes Act 1961. The Court of Appeal ruled in the Crown's favour.[6] Ms Gordon-Smith, having been a party to that appeal and having received a judgment adverse to her in that the Court of Appeal reversed the favourable pre-trial ruling, had a right to seek leave to appeal to the Supreme Court under s 406A(2) of the Crimes Act.[7]

[6] This is not a case like *Re Greenpeace of New Zealand Inc*[8] where Greenpeace had been successful in the Court of Appeal in having a decision of the Charities Commission set aside. Notwithstanding that success, Greenpeace persuaded this Court to grant it leave to appeal.[9] That was because, however, Greenpeace had been only partly successful in the Court of Appeal. The Court of Appeal referred Greenpeace's application for registration as a charitable entity to the Chief Executive of the Department of Internal Affairs and the Charities Board for their reconsideration "in light of this judgment".[10] Greenpeace was entitled to challenge

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4 *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55, [2008] 1 NZLR 13 at [25]. See also *Caie v Attorney*-General [2006] NZSC 7, [2006] 3 NZLR 289 at [1] and *Colman v Police* [2010] NZSC 147, [2011] 2 NZLR 59 at [9].

5 *R v Gordon-Smith* [2008] NZSC 56, [2009] 1 NZLR 721.

6 *R v King* [2008] NZCA 79, [2008] 2 NZLR 460.

7 *R v Gordon-Smith*, above n 5, at [11].

8 *Re Greenpeace of New Zealand Inc* [2012] NZCA 533, [2013] 1 NZLR 339

9 *Re Greenpeace of New Zealand Inc* [2013] NZSC 12.

10 At [105].

that order as, in its view, the Court of Appeal had given the Chief Executive and the Board incorrect riding instructions. In the present case, however, the Minister has not been ordered to reconsider his decisions and as a matter of fact has not. Matters have moved on since October 2011. The Minister is now following a different process, using different statutory powers. In so far as the Minister or the other respondents may subsequently make decisions which rely in part on reasoning in the Court of Appeal's judgment, the applicants, if they are adversely affected by those decisions, will be able to challenge them in the normal way.

[7] What the applicants are in effect seeking is an advisory opinion on the Minister's powers. We do not have jurisdiction to give such opinions. In any event, it would be inappropriate to do so. When in the future the Minister makes decisions under the Canterbury Earthquake Recovery Act 2011, it is much more appropriate that any challenge to such decisions should be made and considered in the normal way, in light of the facts and circumstances underlying such decisions.

[8] For these reasons, we dismiss the application for leave to appeal.

[9] The applicants named as a respondent only the Minister. The Minister and those entities now named as second respondents objected to the second respondents' omission as parties. The second respondents clearly should have been parties. They were all appellants in the Court of Appeal. They were adversely affected by the Court of Appeal's decision. We join the named second respondents as second respondents.

[10] The respondents all sought leave to appeal against the Court of Appeal's decision but only if we granted leave to Independent Fisheries and Clearwater. Since we are not granting them leave, we do not need to consider the respondents' applications.

[11] The applicants must pay costs to the respondents. We increase the costs from the standard $2,500 to $4,000 as both the Minister and the second respondents had to file, not only submissions in opposition to the application for leave, but also

submissions as to why the second respondents should have been joined as parties. The respondents have been successful on both arguments.

Solicitors:
Anthony Harper, Christchurch, for Applicants
Crown Law Office, Wellington, for First Respondent
Wynn Williams, Christchurch, for Second Respondents