

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 96/2019
[2019] NZSC 147**

BETWEEN	SEALEGS INTERNATIONAL LIMITED Applicant
AND	YUN ZHANG First Respondent
	ORION LIMITED AND ORION MARINE LIMITED Second Respondents
	SMUGGLER MARINE LIMITED Third Respondent
	DARREN LEYBOURNE Fourth Respondent
	VLADAN ZUBCIC Fifth Respondent
	DAVID PRINGLE Sixth Respondent
	STRYDA MARINE LIMITED Seventh Respondent

Hearing: 5 December 2019

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: B P Henry and A R Kenwright for Applicant
J G Miles QC and A K Hyde for Respondents

Judgment: 13 December 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay costs of \$4,500 plus usual disbursements to the respondents collectively.

REASONS

Background

[1] Sealegs International Ltd (Sealegs) manufactures amphibious systems for installation on powerboats, with wheels on supporting mechanical “legs” that enable the powerboat to be driven from the beach into the water, where the legs would then be retracted. Sealegs claims that the amphibious system developed by the second respondent, Orion Ltd and Orion Marine Ltd, infringed Sealegs’ copyright.

[2] Sealegs succeeded in the High Court,¹ but the Court of Appeal allowed an appeal against that judgment.²

[3] Sealegs seeks leave to appeal to this Court. It claims there are errors of principle in the Court of Appeal decision which warrant the application for leave to appeal being granted. In particular, Sealegs submits that the Court of Appeal did not apply the law as set out in the *Oraka Technologies Ltd v Geostel Vision Ltd*³ and *Steelbro NZ Ltd v Tidd Ross Todd Ltd* cases.⁴

Our assessment

[4] After considering both the written and oral submissions from the parties, we accept the respondents’ submission that the Court of Appeal made no error of principle. Instead Sealegs’ complaint is that the Court of Appeal misapplied the law to the facts. We thus do not consider the case raises an issue of general or public

¹ *Sealegs International Ltd v Zhang* [2018] NZHC 1724 (Paul Davison J).

² *Zhang v Sealegs International Ltd* [2019] NZCA 389 (French, Cooper and Brown JJ).

³ *Oraka Technologies Ltd v Geostel Vision Ltd* [2013] NZCA 111 (Glazebrook, Randerson and Stevens JJ).

⁴ *Steelbro NZ Ltd v Tidd Ross Todd Ltd* [2007] NZCA 486 (Hammond, Arnold and Wilson JJ).

importance. Nor does it raise a risk of a miscarriage of justice.⁵ The leave criteria in s 74 of the Senior Courts Act 2016 are not met.

Result

[5] The application for leave to appeal is dismissed.

[6] The applicant must pay costs of \$4,500 plus usual disbursements to the respondents collectively.

Solicitors:
Woodroffe Law Partnership, Auckland for Applicant
Keegan Alexander, Auckland for Respondents

⁵ As to the civil standard for miscarriage of justice see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5]; and *Shell (Petroleum Mining) Co Ltd v Todd Petroleum Mining Co Ltd* [2008] NZSC 26, (2008) 18 PRNZ 855 at [4].