

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 66/2022
[2022] NZSC 107

BETWEEN	WENJING LIU Applicant
AND	FUTURE SUSTAINABLE DEVELOPMENT LIMITED Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: D K Wilson for Applicant
R J Hollyman QC and N G Lawrence for Respondent

Judgment: 7 September 2022

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicant applies for leave to appeal against a decision of the Court of Appeal.¹

Background

[2] The dispute between the parties relates to one of the special conditions, cl 20.3, in an agreement for sale and purchase of residential land. Clause 20.3 provides:

¹ *Future Sustainable Development Ltd v Liu* [2022] NZCA 249 (Miller, Goddard and Duffy JJ) [CA judgment].

This agreement is conditional upon the Purchaser, the Purchaser's investor and/or its nominee obtaining an OIA consent to purchase the land under the Overseas Investment Act 2005 (OIA).

[3] The applicant (the vendor) gave notice cancelling the contract and subsequently sought a declaration that the contract had been validly cancelled for non-fulfilment of the condition. The respondent (the purchaser) had purported to waive the condition before the final date for its fulfilment.

[4] The High Court held that cl 20.3 was not capable of being waived by the respondent and that therefore the applicant was entitled to avoid the agreement.²

[5] The Court of Appeal held that the clause was inserted for the sole benefit of the respondent. It was therefore entitled to waive the condition and the applicant was not entitled to cancel.³ An order for specific performance was made.

[6] The clause was inserted against the background that the respondent could nominate a person requiring OIA consent as purchaser. The respondent does not require OIA consent.

Our assessment

[7] The appeal is related to the interpretation of the clause in the contract between the parties and thus relates to the particular facts of the case. There is no point of general or public importance.⁴ There is also no risk of a miscarriage of justice.⁵ The respondent does not require OIA consent and there can therefore be no consequences for the applicant from the respondent failing to obtain such consent.

Result

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

² *Liu v Future Sustainable Development Ltd* [2021] NZHC 2909 (Jagose J) at [30].

³ CA judgment, above n 1, at [61].

⁴ Senior Courts Act 2016, s 74(2)(a). We do not understand the Court of Appeal judgment as making more general comments on whether OIA clauses are always solely for the benefit of a purchaser. The Court's decision was on the basis of the particular facts of this case.

⁵ Senior Courts Act, s 74(2)(b). For the threshold required for a miscarriage of justice in civil cases, see *Junior Farms Ltd v Hampton Securities Ltd* (in liq) [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

[9] The applicant must pay the respondent costs of \$2,500.

Solicitors:

Churton Hart & Divers, Auckland for Applicant

PCW Law, Auckland for Respondent