

IN THE SUPREME COURT OF NEW ZEALAND

**SC 6/2010
[2010] NZSC 29**

BETWEEN DSL LOGISTICS LIMITED
 Applicant

AND NEW ZEALAND SPORTS
 MERCHANDISING LIMITED
 Respondent

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: M J Fisher for Applicant
 A R Galbraith QC for Respondent

Judgment: 30 March 2010

JUDGMENT OF THE COURT

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

REASONS

[1] This application for leave to appeal is in a proceeding about the interpretation of a clause governing the basis of payment to a warehouseman (DSL) after it exercised a contractual right to terminate a storage contract by a period of notice.

[2] Although the Court of Appeal may possibly have been in error in thinking that the costs of delivering the goods from the warehouse to customers of NZSML were to be charged for under Appendix B of the contract (whereas in fact they seem to have been separately charged for under Appendix A) we do not consider that so far undermines the reasoning of the Court of Appeal as to demonstrate that there may have been a substantial miscarriage of justice. It was not obviously wrong in the view it took.

[3] Nor does there appear to be any question of general principle of contract law or appellate procedure raising any seriously arguable issue. The law on entire contracts or entire obligations under contracts is well settled. It was submitted for the applicant that a clause of the kind in dispute is common in the industry but no evidence has been provided to support that assertion. The argument that the Court of Appeal was obliged to deal with all the arguments put up by DSL when in fact it gave quite full reasons for its conclusions is unconvincing. The reasons given were sufficient to dispose of the appeal.

Solicitors:
Castle Brown, Auckland for Applicant
Lee Salmon Long, Auckland for Respondent