

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 87/2010  
[2010] NZSC 132**

BETWEEN                      HI-GENE LIMITED  
   Applicant

AND                              SWISHER HYGIENE FRANCHISE  
   CORPORATION  
   Respondent

Court:                      Blanchard, McGrath and Young JJ

Counsel:                      W G C Templeton and A R Gilchrist for Applicant  
   A C H Clemow for Respondent

Judgment:                      3 November 2010

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**JUDGMENT OF THE COURT**

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

**REASONS**

[1]     The proposed appeal concerns whether an arbitral award made in North Carolina, USA should be enforced in New Zealand. It is said that in circumstances where the arbitrators refused the applicant an adjournment shortly before the hearing and then proceeded to hear and determine the matters in dispute in the absence of the applicant, there was a breach of natural justice which required that the award should not be recognised or enforced in this country.

[2] Both the High Court<sup>1</sup> and the Court of Appeal<sup>2</sup> disagreed. A proposed appeal therefore would challenge their concurrent conclusions on what, in the end, is a matter of evaluation of the circumstances of the award.

[3] Whilst it is possible to be critical of the decision not to grant the adjournment, a consideration of the preceding events and the grounds on which and the manner in which the adjournment was sought leads us to the view that the proposed appeal has no prospect of success. What the arbitrators did was not in context so egregious that it justifies refusal to enforce the award. The Courts below have fairly appraised the situation. No question of general principle arises and there is no appearance of a miscarriage of justice.

Solicitors:  
Foley & Hughes, Auckland for Applicant  
Gaze Burt, Auckland for Respondent

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<sup>1</sup> *Swisher Hygiene Franchise Corporation v Hi-Gene Ltd* HC Auckland CIV-2009-404-1573, 2 December 2009 per Duffy J.

<sup>2</sup> *Hi-Gene Ltd v Swisher Hygiene Franchise Corporation* [2010] NZCA 359 per Randerson, Potter and Venning JJ.