

IN THE SUPREME COURT OF NEW ZEALAND

**SC 117/2009
[2010] NZSC 24**

BETWEEN	JOHNATHAN BRIAN IRVINE First Applicant
AND	FELICITY JANE IRVINE Second Applicant
AND	TIMOTHY MALCOLM IRVINE Third Applicant
AND	JOHN DOUGLAS WILSON First Respondent
AND	ADELE JOY WILSON Second Respondent
AND	TRACEY MICHELLE WHITE Third Respondent

Court: Elias CJ, McGrath and Wilson JJ

Counsel: M C Black for Applicants
S O McAnally and B M Hojabri for Respondents

Judgment: 18 March 2010

JUDGMENT OF THE COURT

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

REASONS

[1] This application for leave to appeal relates to a dispute over compliance with the provisions of a deed of termination of a joint venture. The parties are conveniently referred to as the Irvines and the Wilsons. The issue is whether the

Irvines are bound to pay \$3,500,000 to the Wilsons in accordance with the terms of that deed.

[2] The Wilsons' application for summary judgment was dismissed by an Associate Judge¹ but that judgment was reversed by the Court of Appeal,² which entered judgment for the Wilsons.

[3] The Irvines seek leave to appeal to this Court on two grounds. The first concerns whether the second and third applicants are personally liable under the summary judgment, they being trustees. The second is whether breach of internal governance requirements, in relation to funding limits in a shareholders' agreement, and consequent non-compliance with the Companies Act 1993 in relation to the joint venture company, vitiated the deed of termination that the parties later entered into on which the Wilsons sued.

[4] On the first ground, the Irvines maintain the Court of Appeal judgment is not sufficiently clear that the second and third appellants are not personally liable. Where a litigant is concerned that there is an ambiguity in a judgment of the Court of Appeal, the matter must first be raised in the Court of Appeal. We should not, however, be taken as accepting there is any ambiguity in this case. In any event, we are satisfied that the first proposed ground does not raise the principles on which trustees may become personally liable but only whether or not they apply in the circumstances of the case that would be in issue.

[5] On the second ground, it is not in our view arguable that breaches of the shareholders' agreement prevented the parties from entering into a deed of termination of their joint venture or from enforcing it according to its terms.

[6] For these reasons, we are satisfied that neither proposed ground raises a matter of general commercial significance. Nor do they meet any other aspect of the interests of justice test which must be satisfied before we can grant leave to appeal.

¹ *Wilson v Irvine* High Court Auckland CIV 2007-404-6640, 3 April 2009.

² *Wilson v Irvine* [2009] NZCA 569.

[7] The application for leave to appeal is accordingly refused with costs of \$2500 to the Wilsons.

Solicitors:
Castle Brown, Auckland for Applicants
Keegan Alexander for Respondents