

IN THE SUPREME COURT OF NEW ZEALAND

**SC 11/2010
[2010] NZSC 62**

BETWEEN MICHAEL SHANE McELROY, JOHN
 WARWICK LAMBIE AND HUGH
 DRUMMOND LAMBIE AS TRUSTEES
 OF THE CRAIGIE TRUST
 Applicants

AND AUCKLAND INTERNATIONAL
 AIRPORT LIMITED
 Respondent

Court: Elias CJ and McGrath J

Counsel: C R Carruthers QC and B H Dickey for Applicants
 A R Galbraith QC and S J Katz for Respondent

Judgment: 9 June 2010

JUDGMENT OF THE COURT

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

REASONS

[1] This application for leave to appeal concerns the compulsory acquisition of the applicants' land adjacent to Auckland Airport for the public works purpose of an "aerodrome". The applicants seek leave on the ground that the land is not "required" for the public work of an aerodrome under s 40 of the Public Works Act 1981.

[2] The courts below held that the applicants' land was required for the public works purpose of an airport, the modern day equivalent of an aerodrome.

[3] The Supreme Court in *Hood v Attorney-General*¹ observed that questions regarding the use of land for public works are specific to the circumstances of the particular land and its history.

[4] That is the position in the present case. Notwithstanding the applicants' contention that the Court of Appeal² misinterpreted the word "required" in s 40 of the Public Works Act, its complaint is not with interpretation but with the judgment on the facts reached concurrently in the High Court³ and Court of Appeal that the land is required for the public work for which it was taken (an "aerodrome"). There was therefore no obligation to offer the land back (and the questions of whether the exception to the requirement to offer back and the date of valuation are not reached). No question of general or public importance or general commercial significance arises in the application of the Act to the facts. The fact that the land is currently either unused or is used for ancillary commercial purposes of the airport does not affect the fact that it is held for airport purposes, for the reasons fully explained by the courts below (and turning on the nature of an airport).

[5] The application is accordingly dismissed with costs of \$2,500 to the respondent.

Solicitors:
Meredith Connell, Auckland for Applicants
Russell McVeagh, Auckland for Respondent

¹ *Hood v Attorney-General* [2005] NZSC 53, [2007] NZRMA 28 at [4].

² *McElroy v Auckland International Airport Ltd* [2009] NZCA 621.

³ *McElroy v Auckland International Airport Ltd* [2008] 3 NZLR 262.