

30 September 2003. That conduct was found to be consistent only with an intention not to invoke the right to cancel. There was no dispute in the Court of Appeal as to the legal principles which applied. The issue was to determine the consequences in law of largely undisputed facts. In that respect the Court of Appeal differed from Randerson J in the High Court. He had declined to enter summary judgment for the Jansens.

[3] We are not persuaded that the case warrants the granting of leave to ventilate again what is essentially a factual issue. We say that for two reasons. First, the factual issue between these parties does not involve any matter of general or public importance nor does it involve a matter of general commercial significance. The appellant's comprehensive submissions have not persuaded us otherwise. None of the criteria for the granting of leave to appeal, as set out in s 13(2) of the Supreme Court Act 2003, have been demonstrated.

[4] Furthermore, we have no doubt that the Court of Appeal was correct in finding on the facts of this case a clear election or waiver preventing the appellant from what would otherwise have been an ability to cancel in terms of clause 22. That clause cannot possibly be construed as giving a continuing, day to day, right of cancellation, unrestrained as to time and irrespective of the conduct of the appellant in the meantime.

[5] In summary, our view is that it is not necessary in the interests of justice for this Court to hear and determine the proposed appeal. Hence, in terms of s 13(1), we are obliged to decline the application for leave, with costs as noted above.

Solicitors:
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