

IN THE SUPREME COURT OF NEW ZEALAND

**SC 61/2009
[2009] NZSC 74**

BETWEEN TALBOT 2002 UNDERWRITING
 CAPITAL LIMITED
 Applicant

AND MAINTENANCE TECHNOLOGY AND
 ENGINEERING LIMITED
 Respondent

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: J G Miles QC, M G Ring QC and P R Rzepecky for Applicant
 B D Gray QC and A J Sherlock for Respondent

Judgment: 14 July 2009

JUDGMENT OF THE COURT

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

REASONS

[1] The trial of a proceeding between the applicant and the respondent is part heard in the High Court. The applicant applied to the trial Judge to recuse herself asserting that the trial has been conducted by the Judge in a manner demonstrating apparent bias. In a reasoned decision the Judge dismissed that application.

[2] The applicant appealed to the Court of Appeal against that decision. By Minute of the Court dated 16 June 2009, the Court of Appeal declined to hear the appeal as a matter of urgency before the completion of the High Court trial. It said that once the trial is completed the matters raised by the applicant “can be assessed in their full context in any post-trial appeal”.

[3] We agree with the Court of Appeal that it would be most unusual for an appeal court to entertain an appeal seeking a new trial during the currency of an existing trial. That would normally be appropriate only where the taking of the point on an appeal after judgment in the High Court trial could not cure the matter complained of. This is not such a case.

[4] The stance and interests of the respondent are highly relevant. It opposes the present application and says it is entitled to have the trial completed. It says that what is only a risk of miscarriage of justice is not a sufficient basis for the present trial to be aborted. We agree. We are not persuaded that it can be shown to be essential for the Court of Appeal to have examined the matter at an urgent fixture before the completion of the present trial.

Solicitors:
McElroys, Auckland for Applicant
Hesketh Henry, Auckland for Respondent