

IN THE SUPREME COURT OF NEW ZEALAND

SC 98/2010
[2011] NZSC 1

BETWEEN WESTPAC NEW ZEALAND LIMITED
Appellant
AND MAP & ASSOCIATES LIMITED
Respondent

Court: Blanchard, Tipping and William Young JJ

Counsel: R B Stewart QC for Appellant
B D Gustafson for Respondent

Judgment: 2 February 2011

JUDGMENT OF THE COURT

- A The application for leave to appeal is granted.**
- B The approved ground of appeal is whether the Court of Appeal was correct in holding that Westpac had breached its mandate.**
- C The application for leave to cross-appeal is refused.**

REASONS

[1] On the application for leave to cross-appeal, the respondent seeks to challenge the Court of Appeal's decision on costs. The Court quashed the order for indemnity costs made by the High Court. The respondent contends that in doing so the Court erred in three ways and that leave should be granted because otherwise a miscarriage of justice may occur. The respondent contends that the test for leave to be granted in these circumstances, as set out in *Junior Farms Ltd v Hampton*

Securities Ltd,¹ is met. The appellant submits that the necessary test is not met. We agree with the appellant.

[2] The points raised by the respondent do not persuade us that as regards costs the Court of Appeal made a sufficiently apparent error of such a substantial character that it would be repugnant to justice to permit it to go uncorrected. Indeed we consider this case falls well short of meeting that high threshold. Hence the application for leave to cross-appeal should be refused.

Solicitors:
Kensington Swan, Auckland for Respondent

¹ (2006) PRNZ 369 (SC) at [5].