



form, with the result that s 13(4) of the Supreme Court Act 2003 is relevant. Viewed through the s 13(4) lens, the issue is whether the proposed appeal raises any issue which it is necessary, in the interests of justice, for this Court to determine before trial.

[3] The most plausible basis for arguing that this test is met is the applicants' submission that Ms Marshall's claim to an equitable interest is an abuse of process given the earlier proceedings under the Property (Relationships) Act 1976. We accept that an abuse of process argument raises the sort of issues which are often – perhaps usually – best addressed before trial. On the other hand, the present circumstances are very unusual and a complete evaluation of the abuse of process argument may well require a more detailed understanding of the facts than is available on the material which was placed before the Associate Judge. Indeed, on the basis of the submissions which were advanced, we are not confident that the abuse of process argument would be able to be dealt with completely and fairly on that material.

[4] Accordingly, the application for leave to appeal is dismissed.

Solicitors:  
Morgan Coakle, Auckland for Applicants  
Parnell Law, Auckland for Respondent