IN THE SUPREME COURT OF NEW ZEALAND

SC 71/2013 [2013] NZSC 107

BETWEEN MICHAEL VICTOR BOURNEVILLE

AND MARK GRAHAM BLEWDEN

Applicants

AND CHRISTINE JILL MARSHALL

Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: B P C Carter for Applicants

A Hart for Respondent

Judgment: 8 November 2013

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.
- B The applicants are to pay the respondent costs of \$2,500 and reasonable disbursements.

REASONS

- [1] The proposed appeal concerns a caveat lodged by Ms Marshall against the title of a property owned by the applicant trustees. Associate Judge Osborne refused an application by her for an order that the caveat not lapse. The Court of Appeal subsequently allowed Ms Marshall's appeal and the applicants wish to appeal to this Court against the latter decision.
- [2] The principal question before the Associate Judge was whether Ms Marshall's claim to an equitable interest in the property was arguable. For this reason, the proposed appeal is interlocutory in character, if not necessarily so in

Marshall v Bourneville [2012] NZHC 2547.

² Marshall v Bourneville [2013] NZCA 271.

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