

IN THE SUPREME COURT OF NEW ZEALAND

SC 60/2014
[2014] NZSC 102

BETWEEN DOUGLAS AND CHRISTINE SANDRA
BANKS
Applicants

AND GREY DISTRICT COUNCIL
Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Applicants in person
J Shackleton and D A Ward for Respondent

Judgment: 5 August 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicants, the Banks, are involved in a dispute with the respondent, the Grey District Council, concerning a residential property in Blaketown, Greymouth that they occupy under a ground lease from the Council. The dispute concerns the timing of rent reviews under the ground lease. The Banks were unsuccessful before Fogarty J in the High Court¹ and have filed appeals in the Court of Appeal against the Judge's substantive decision and his subsequent decision on costs.²

[2] The Banks are self-represented. The Court of Appeal has not yet heard their appeals. On 13 May 2014, Stevens J gave directions that:

(a) both appeals would be heard together;

¹ *Grey District Council v Banks* [2013] NZHC 1485.

² *Grey District Council v Banks* [2013] NZHC 2304.

- (b) the appeals would be heard on the basis of the case on appeal filed by the Council;
- (c) all questions of costs would be dealt with as part of the appeals; and
- (d) there should be a one day fixture.

[3] The Banks seek leave to appeal to this Court against these directions, in particular the directions in (b) and (d). There is a question as to whether they filed their application in time, but as any delay was minimal, we will address the application on its merits.

[4] Procedural orders of the sort made by Stevens J are made under s 61A(1) of the Judicature Act 1908. Under s 61A(2) such directions may be varied or set aside by a panel of Court of Appeal judges. That is the mechanism by which challenges to this type of procedural order should be brought pre-hearing.

[5] If the directions of the single judge are upheld on review, the unsuccessful party may seek leave to appeal to this Court, although the Court is most unlikely to grant leave in respect of an interlocutory application of that type. The appropriate course is for the unsuccessful party to wait until the substantive appeal has been determined and, if unsuccessful, to seek leave to appeal to this Court against that substantive decision, raising the alleged procedural error(s) as a ground of appeal, along with any other grounds.

[6] This is not to say, of course, that this Court would necessarily grant leave in such circumstances. The application for leave to appeal would have to meet the grounds set out in s 13 of the Supreme Court Act 2003.

[7] In the result, we are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Simpson Grierson, Wellington for Respondent