IN THE SUPREME COURT OF NEW ZEALAND

SC 29/2009
[2009] NZSC 61

BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Applicant
AND	KAPITI COAST DISTRICT COUNCIL First Respondent
AND	KOTUKU PARKS LIMITED Second Respondent

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: T J Castle for Applicant
J S Kós QC for Respondents

Judgment: 16 June 2009

JUDGMENT OF THE COURT

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

REASONS

[1] Section 93(1)(b) of the Resource Management Act 1991 provides that public notification of consent applications is not required if the consent authority is satisfied that the adverse effects of the activity on the environment will be minor. Section 94A(c) then requires the consent authority, when considering whether the adverse effects will be minor, to disregard any effect on a person who has given written approval to the application. The Court of Appeal[1] accepted the submission of the

[1] [2009] NZCA 73.

applicant that, correctly construed, s 94A(c) prevented consideration of effects personal to the party giving written approval but permitted consideration of wider effects. The Court found however that the first respondent, as the consent authority, had considered the application on that basis.

[2] Relying on the judgment of this Court in *Discount Brands Ltd v Westfield (New Zealand) Ltd*,[2] the applicant contends that, in applying its interpretation of s 94A(c), the Court of Appeal erred in law by departing from the requirement that the consent authority be satisfied that the effects which can be considered are not more than minor. It appears to us however that the Court was not intending to lay down any new test when it said that the first respondent's planners had not ignored the reserve in question or pretended it did not exist. In fact, the judgment describes the consideration the planners gave to the reserve.

[3] In summary, the applicant won on the point of general principle in the Court of Appeal, but lost in application of that general principle to the facts of the particular case. There is no point of general importance in issue which would justify an appeal to this Court. The Court of Appeal was not clearly in error in finding as it did on the facts and there is therefore no question of miscarriage of justice. The application for leave to appeal is therefore dismissed.

[4] Because the respondents filed a joint submission through Mr Kós QC, costs should be fixed as if there were a single respondent. The applicant is therefore ordered to pay costs of $2,500 to the respondents jointly.

Solicitors:
Buddle Findlay, Wellington for Applicant
Simpson Grierson, Wellington for First Respondent
Shanahan Law, Wellington for Second Respondent

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2 [2005] 2 NZLR 597.