

IN THE SUPREME COURT OF NEW ZEALAND

**SC 55/2007
[2007] NZSC 106**

BETWEEN TRANSPOWER NEW ZEALAND
 LIMITED
 Applicant

AND TODD ENERGY LIMITED
 Respondent

Court: Tipping, McGrath and Anderson JJ

Counsel: D J Goddard QC, L Theron, J Shackleton and T Stephens for Applicant
 G P Curry and J D Palmer for Respondent

Judgment: 13 December 2007

JUDGMENT OF THE COURT

The applications for leave to appeal and to cross-appeal are dismissed.

REASONS

[1] Some eight years ago Todd Energy Ltd began proceedings under the Commerce Act 1986 against Transpower New Zealand Ltd and Powerco Ltd. The case has still not been brought to trial because, it seems, the parties have been diverted by interlocutory manoeuvring. Now, Transpower seeks leave to appeal and Todd seeks leave to cross-appeal against a judgment of the Court of Appeal in respect of certain interlocutory applications. As well as having to satisfy any of the criteria for leave stipulated by s 13(2) of the Supreme Court Act 2003 they must also overcome the s 13(4) constraint on appeals from interlocutory orders.

[2] On 26 April 2005 and 15 August 2006 the High Court delivered judgments on applications by Todd and Transpower relating to Todd's extant statement of claim and a proposed further amended statement of claim. Those applications had put in issue whether various pleaded causes of action were or were not fresh. The answers would determine whether a particular cause of action was barred by the limitation provisions of the Commerce Act and/or whether it had arisen since the filing of the statement of claim. In the former case a pleading would be prohibited by r 187(3)(a) of the High Court Rules and in the latter case leave to add the cause of action would be required by r 187(5).

[3] When those applications came before the Court of Appeal that Court struck out some but not all of Todd's causes of action and refused summary judgment to Transpower. It also reinstated a cause of action which the High Court had struck out, and directed Todd to file and serve an amended statement of claim with certain specified inclusions and exclusions.

[4] In disposing of the appeal and cross-appeal, the Court of Appeal applied well established principles including, for example, the test for determining whether a cause of action is fresh. Todd and Transpower seek to challenge the outcome of their application. But that does not render the case one of general or public importance under s 13(2)(a) of the Supreme Court Act. Nor does the appeal involve a matter of general commercial significance under s 13(2)(c). In order to bring a civil case within the substantial miscarriage of justice ground under s 13(2)(b), an applicant must satisfy the principles established by *Junior Farms Ltd v Hampton Securities Ltd (in liq)*.¹ We are not satisfied that either the proposed appeal or proposed cross-appeal satisfy s 13(2). That being the case s 13(4) requires no consideration.

[5] The applications are dismissed accordingly with no orders as to costs.

Solicitors:
Simpson Grierson, Wellington for Applicant
Russell McVeagh, Auckland for Respondent

¹ [2006] 3 NZLR 522n.