IN THE SUPREME COURT OF NEW ZEALAND

SC 38/2010
[2010] NZSC 71

BETWEEN	G E FREE NZ IN FOOD AND THE ENVIRONMENT INCORPORATED Applicant
AND	AGRESEARCH LIMITED First Respondent
AND	ENVIRONMENTAL RISK MANAGEMENT AUTHORITY Second Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: D Salmon and T Bennion for Applicant
J B M Smith for First Respondent
P J Radich and C P Gregorash for Second Respondent

Judgment: 29 June 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of $2,500 to each respondent.

REASONS

[1] In this judicial review proceeding the applicant, GE Free NZ in Food and Environment Inc, claimed that the second respondent, Environmental Risk Management Authority (ERMA), had erred in law in receiving an application by the first respondent, AgResearch Ltd, under s 40 of the Hazardous Substances and New Organisms Act 1997 relating to proposals by AgResearch to import certain organisms and to develop and field test them in containment. The High Court granted judicial review holding that the applications did not comply with the

requirements of the section because they were too generic to enable ERMA to undertake the risk assessment required by s 45 of the Act.

[2] The Court of Appeal reversed that decision. It considered that ERMA had no statutory obligation to reject an application under s 40 if not satisfied that it strictly complied with the statutory requirements. Rather, it had to satisfy itself prior to determining under s 45 whether the application (as modified or clarified in the course of ERMA's consideration) fell within s 40 and could be approved. In reaching that decision under s 45, ERMA has power to seek further information (s 48) and to obtain reports (s 58). The Court of Appeal concluded that the decision to register an application under s 40 is essentially mechanical.

[3] We consider that the proposed appeal has insufficient prospects of success to warrant leave. Section 29(1)(c) of the Act makes insufficiency of information a substantive ground for the refusal of an application. In view of this, it could only be in the rarest of cases that it would be appropriate for the High Court's review discretion to be exercised on insufficiency of information grounds ahead of ERMA's consideration of the substance of the application, whatever the apparent inadequacy of the application might be on its initial filing. The statute expressly contemplates that the sufficiency of information question will be addressed by the Authority as part of its decision making process, not as a preliminary matter. The present case cannot be regarded as one where it would be appropriate for an in limine consideration of sufficiency by way of judicial review.

Solicitors:
Lee Salmon Long, Auckland for Applicant
AgResearch, Hamilton for First Respondent
Minter Ellison Rudd Watts, Wellington for Second Respondent