

IN THE SUPREME COURT OF NEW ZEALAND

**SC 67/2009
[2009] NZSC 98**

BETWEEN JOHN CARR LAIDLAW AND ANOR
 Applicants

AND GEOFFREY FRANCIS PARSONAGE
 AND ANOR
 Respondents

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: G D R Shand for Applicants
 K W Berman for Respondents

Judgment: 21 September 2009

JUDGMENT OF THE COURT

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

REASONS

[1] The single point on this proposed appeal is whether the Court of Appeal correctly concluded that the description of a purchaser in an agreement for sale and purchase as “X and/or nominee” is sufficient to bring the nominee within s 4 of the Contracts (Privity) Act 1982 with the consequence that the nominee can enforce the contract under s 8 of that Act. We are declining leave because the proposed argument for the applicant has no prospect of succeeding. The reasoning of the Court of Appeal is entirely convincing. We agree with that Court that statements to the contrary in the first of the cases under the Act to reach the Court of Appeal, *Field v Fitton*¹ are wrong. That has been the view almost unanimously taken in

¹ [1988] 1 NZLR 482.

subsequent cases both at High Court and Court of Appeal level and such criticisms as have been made of it are unconvincing.

[2] A nominee fits easily within the requirement in s 4 that the contractual promise must confer or purport to confer a benefit on a person “designated by ... description”, particularly when the section goes on to say that the person need not be in existence at the time when the contract is made.

[3] The very purpose of a nominee provision is to enable the nominee to take the benefit of the contract by enforcing it (as permitted by s 8), while at the same time leaving the vendor with the protection of the continuing liability of the purchaser if the nominee proves unwilling to complete. A designation by description requires no more than a sufficient identification of the person who may take the benefit. There is no good reason why that person should not be identified by the nomination of the purchaser. Identification by a third party or by the occurrence independently of an event or by some other particular means is not required by s 4.

[4] The law on this point in New Zealand has been satisfactorily settled by the decision below.

Solicitors:
Grimshaw & Co, Auckland for Applicants
Daniel Overton & Goulding, Auckland for Respondents