

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAYTON H. EVANS and PATRICIA	§
EVANS,	§
	§ No. 710, 2010
Plaintiffs Below-	§
Appellants,	§
	§
v.	§
	§ Court Below—Superior Court
JOHN E. O’BRIEN, ESQUIRE and	§ of the State of Delaware,
BROWN SHIELS & O’BRIEN LLC,	§ in and for Kent County
	§ C.A. No. 09C-04-017
Defendants Below-	§
Appellees.	§

Submitted: December 6, 2010

Decided: December 9, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**ORDER**

This 9th day of December 2010, it appears to the Court that:

(1) The plaintiffs-appellants have petitioned this Court, pursuant to Supreme Court Rule 42, to accept an appeal from an interlocutory order of the Superior Court dated October 11, 2010. The trial court’s order granted the defendants’ motion for partial summary judgment on the plaintiffs’ claim for fraud and dismissed the plaintiffs’ claim for breach of fiduciary duty for lack of subject matter jurisdiction. The plaintiffs’ legal malpractice claim remains pending before the Superior Court.

(2) The plaintiffs filed their application for certification to take an interlocutory appeal in the Superior Court on October 15, 2010. The Superior Court denied the certification application on November 3, 2010.

(3) Applications for interlocutory review are addressed to the sound discretion of this Court. In the exercise of its discretion, this Court has concluded that the application for interlocutory review does not meet the requirements of Supreme Court Rule 42(b) and should be refused.<sup>1</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the within interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

---

<sup>1</sup> The Court's refusal to hear this interlocutory appeal is without prejudice to the plaintiffs' right to challenge the Superior Court's October 11, 2010 ruling once a final judgment is entered in the case pursuant to either Superior Court Civil Rule 58 or Superior Court Civil Rule 54(b).