



Supreme Court of New Zealand

16 August 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**WESTPAC NEW ZEALAND LIMITED v MAP & ASSOCIATES LIMITED
(SC 98/2010)
[2011] NZSC 89**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The Supreme Court has unanimously dismissed an appeal by Westpac New Zealand Limited from a decision of the Court of Appeal which held it liable for breach of mandate. The Bank declined to pay money held to the account of the respondent, MAP & Associates Limited, in accordance with MAP's instructions. It sought to justify its failure to pay by saying that it had a legitimate concern that by following MAP's instructions it would have been dishonestly assisting MAP in committing a breach of trust. The Bank did not, however, establish that a breach of trust would actually have occurred if it had acted on MAP's instructions.

The issue before the Court was whether, despite that fact, a reasonable belief or suspicion on the Bank's part that a breach of trust would have resulted had it followed MAP's instructions sufficed as a defence to its prima facie liability for breach of mandate. The Court has held that nothing less will suffice as a defence than proof that a breach of trust would actually have resulted and that the Bank would have been acting dishonestly in making the payments involved in implementing its customer's instructions.

Hence the Bank had no defence in the present case and its appeal was dismissed.

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