IN THE SUPREME COURT OF NEW ZEALAND

SC 37/2014
[2014] NZSC 71

BETWEEN	PETER CHARLES YORK First Applicant
	ALPINE GLACIER MOTEL LIMITED Second Applicant
AND	WESTLAND DISTRICT COUNCIL Respondent

Court: William Young, Glazebrook and Arnold JJ

Counsel: S P Rennie and J E Bayley for Applicants
D J Neutze for Respondent

Judgment: 16 June 2014

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants are jointly and severally liable to pay costs of $2,500 to the respondent.

REASONS

[1] In August 2005, the first applicant, Mr York, entered into an agreement to purchase a motel (land and business) at Franz Joseph, as agent for the second respondent, a company not then formed. The agreement was conditional on a land information memorandum (LIM) being obtained. The respondent Council provided a LIM on 19 August 2005. Having obtained the LIM, Mr York confirmed the contract, and the transaction settled in September 2005.

[2] Under the heading "Special Land Features" the LIM said: "No information located". The applicants allege that the Council was negligent in making this statement because, at the time, it was aware of the existence of the Alpine Fault, of

the threat that it posed to the motel and to Franz Joseph generally and of a Government suggestion that local authorities establish fault avoidance zones of at least 20 metres either side of fault lines. In November 2010, the Council proposed to establish such a zone in respect of the Alpine Fault. According to the applicants, this proposal resulted in a substantial reduction in the value of their land and motel business.

[3] In July 2012, the applicants issued proceedings against the Council seeking damages for negligent misstatement. They claimed that they had not become aware of the Council's negligence until the announcement in November 2010, when they learnt of the proposed zone and the reasons for it. The Council applied to strike out the proceedings as being outside the limitation period. It was unsuccessful in the High Court,[1] but succeeded on appeal.[2] The Court of Appeal accepted that the Council owed a duty of care to the applicants when providing the LIM but considered that this Court's decision in *Marlborough District Council v Altimarloch Joint Venture Ltd*[3] was not relevantly distinguishable, so that the applicants suffered loss when they settled the transaction in September 2005: at that time they paid a price for the property that exceeded its actual value. Accordingly, their claim against the Council was time-barred.

[4] The applicants submit that the loss was suffered not at the date of the transaction but subsequently in November 2010 when the Council made public its proposal for a fault avoidance zone. They contend that they did not suffer loss until the issue affecting the property became known to the market, seeking to draw an analogy with a latent defect in a house, as addressed in *Invercargill City Council v Hamlin*.[4]

[5] We are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. In addition to what was said in *Altimarloch*, this Court has considered aspects of limitation in *Murray v Morel & Co Ltd*[5] (which held that

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1 *York v Westland District Council* [2013] NZHC 2918.
2 *Westland District Council v York* [2014] NZCA 59.
3 *Marlborough District Council v Altimarloch Joint Venture Ltd* [2012] NZSC 11, [2012] 2 NZLR 726.
4 *Invercargill City Council v Hamlin* [1996] 1 NZLR 513 (PC).
5 *Murray v Morel & Co Ltd* [2007] NZSC 27, [2007] 3 NZLR 721.

the principle of reasonable discoverability should not be extended) and *Thom v Davys Burton* (which addressed contingent losses).[6] We consider that the present case does not raise any issue of general or public importance but rather concerns the application of well-settled principles to a particular fact situation. Moreover, we are not persuaded that there is any risk that a substantial miscarriage of justice has occurred, particularly given the Court's analysis in *Altimarloch*.

[6] Accordingly, we dismiss the application for leave to appeal. The applicants are jointly and severally liable to pay costs of $2,500 to the respondent.

Solicitors:
Rhodes & Co, Christchurch for Applicants
Brookfields, Auckland for Respondent

6 *Thom v Davys Burton* [2008] NZSC 65, [2009] 1 NZLR 437.