



**Supreme Court of New Zealand
Te Kōti Mana Nui**

19 February 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**TAURANGA LAW v JOHN APPLETON AND NATALIE MARIE
RYAN AS TRUSTEES OF THE APPLETON FAMILY TRUST**

(SC 108/2013) [2015] NZSC 3

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appeal is concerned with losses suffered by a family trust set up by Mr Appleton which in 2004 invested in an apartment to be developed by companies in the Blue Chip group. The deposit of \$90,468.75 paid by the Appleton interests to Blue Chip was lost when the Blue Chip group was placed in liquidation before the development was completed and title to the property was obtained. Mr Appleton and the trust claimed damages from Tauranga Law, a firm of solicitors which acted for them in the transaction after Mr Appleton had first entered into an unconditional agreement for sale and purchase of the property without legal advice. Mr Appleton was referred to Tauranga Law by a Blue Chip broker who arranged for forwarding to Tauranga Law the documents concerning the sale and purchase together with details of the finance which had been arranged by the broker with Mr Appleton’s bank.

There were a number of risks in the transaction. The vendor did not own the land on which the apartments were to be built. No agreements between the vendor and the owner or the developer were disclosed. The settlement date could be indefinitely extended at the option of the vendor. The unusually high deposit was not to be held by a stakeholder under the agreement for sale and purchase but was to be released immediately to the vendor under its terms. The documents were subsequently

described in evidence by Mr Olivier, the principal in Tauranga Law as “shonky”.

The apartment was never constructed and Mr Appleton was unsuccessful in attempting to obtain return of his deposit. Ultimately, with the collapse of the Blue Chip group he became an unsecured creditor in the liquidation.

The Appleton interests were unsuccessful in the High Court. Allan J held that, although Tauranga Law had breached duties of care owed to them, the breaches did not cause the loss they suffered. On appeal by the Appleton interests, the Court of Appeal confirmed the findings of breach of duty of care but allowed an appeal on the question of causation of loss. It entered judgment against Tauranga Law in favour of the Appleton interests for the deposit together with interest. Tauranga Law appealed with leave to this Court.

The single issue for determination was whether the negligence of Tauranga Law caused the loss suffered by the Appleton interests. That question of fact turned on a letter of advice provided by Mr Olivier, the principal in Tauranga Law, to Mr Appleton on 31 May 2004 and Mr Appleton’s reaction to it.

Allan J in the High Court found that Tauranga Law was in breach of duties of care owed in the circumstances to Mr Appleton before he confirmed that Tauranga Law was to act for him in the transaction and a contract of retainer arose. It was held that Tauranga Law was in breach of the duty of care in not advising Mr Appleton of the risks in the transaction and his statutory right to withdraw from it before the period for withdrawal had elapsed. In addition, Allan J found that after the contract of retainer had arisen when Mr Appleton confirmed that Tauranga Law was to act in the transaction for him, Tauranga Law breached duties of care by failing to provide adequate advice to Mr Appleton on the risks in the transaction.

The only advice provided by Tauranga Law was in a letter of 31 May 2004 which outlined some of the risks of the transaction but which the Judge held to have been inadequate to fulfil the duty of care owed. Despite the inadequacies, the Judge found that the letter would have given most investors pause. The fact that Mr Appleton did not seek further advice after receiving it and attended to execution of the documents for borrowing to finance payment of the deposit despite it were circumstances relied on by the Judge in concluding that Mr Appleton would have proceeded with the transaction in any event, because of his confidence in Blue Chip (with which he had made a previous and successful investment).

The Court of Appeal differed in that assessment. It considered that the deficiencies in the letter of advice of 31 May were more serious than Allan J had thought and as a result reassessed his findings as to causation in that light. The Court of Appeal was prepared to place more reliance than Allan J on the evidence of Mr Appleton at trial that, had he

known of the risks involved with the transaction, his ability to cancel the agreement and particularly that his deposit was being released rather than being held in a solicitor's trust account (as he said he had assumed would be the case), he would not have proceeded with the purchase. The Court of Appeal accepted Mr Appleton's contention that, had he understood that his deposit was not secure in a solicitor's trust account, he would have done his best to extricate himself from the agreement. It considered that the letter of advice of 31 May was "ambiguous" on the critical question of the security of the deposit.

On appeal to the Supreme Court, Tauranga Law contended that the evidence supported the conclusion of Allan J that Mr Appleton would have proceeded with the transaction, regardless of whether he had received adequate legal advice. The Appleton respondents maintained that the Court of Appeal was correct to conclude that, had the advice been adequate particularly on the question of payment of the deposit, Mr Appleton would have extricated himself from the agreement without paying the deposit (as the evidence indicated he could have done without penalty at the time).

The Supreme Court has unanimously allowed Tauranga Law's appeal. The letter of advice prominently identified the risk in the immediate release of the deposit and advised that the deposit could be lost entirely if the vendor company failed or the development was not completed. The risk in the transaction which eventuated and caused loss was therefore identified in the letter. The Court considered that it was not possible to square the information provided in the letter with a reasonable belief that the deposit was to be held in a trust account until the date of settlement. Mr Appleton's evidence was that he did not take much notice of the letter of advice because he felt confident about the investment and about Blue Chip generally. Accordingly, any deficiencies in the letter of advice did not cause the loss that Mr Appleton and his family trust suffered.

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