



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

19 FEBRUARY 2025

MEDIA RELEASE

LOUISE BUCHANAN, KEITH MARSHALL AND ALISTAIR DONALD AS TRUSTEES OF THE BUCHANAN MARSHALL FAMILY TRUST v TASMAN DISTRICT COUNCIL

(SC 49/2024)

Hearing of the Supreme Court in the Christchurch High Court Tuesday 11 March – Wednesday 12 March 2025

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

Background

In 2004, the Tasman District Council (the Council) issued a building consent for an architecturally designed home oriented around a swimming pool set in a central courtyard. The home was constructed according to the consent and in 2006 the Council issued a Code Compliance Certificate (CCC). In 2008, Louise Buchanan and Keith Marshall purchased the home in their capacity as trustees of the Buchanan Marshall Family Trust. Before the purchase, the trustees specifically checked that the home had a CCC. In 2009, and again in 2012, the Council inspected the pool and confirmed that it complied with the Fencing of Swimming Pools Act 1987 (the Act). However, in 2019, when the trustees advertised the property for sale, the Council inspected the pool again and said that the fencing did not comply with the Act. The trustees undertook the necessary remedial work, but considered that the work impaired the appearance and amenity of the house, reducing its value. They issued proceedings against the Council.

Courts below

On 1 February 2023, the High Court found in favour of the trustees. It held that the Council owed the trustees a duty of care when carrying out the 2009 and 2012 inspections, and that the Council had breached that duty by negligently confirming that the property was compliant. The High Court required the Council to pay approximately \$246,000 in damages to compensate the trustees for the loss of value of the property, the cost of remedial costs, and certain associated costs. It also ordered the Council to pay \$25,000 general damages for distress and humiliation.

On 26 April 2024, the Court of Appeal allowed the Council's appeal. It held that when the Council carried out the 2009 and 2012 inspections, it did not owe a duty of care to the trustees. Rather, the purpose of the inspections was to to keep young children safe by ensuring that the property complied with the Act.

This appeal

On 20 August 2024, the Supreme Court granted leave to appeal. The approved question is whether the Court of Appeal was correct to hold that there was no duty of care owed by the Council to the trustees while carrying out and making statements in relation to pool inspections under the Act. The Court will also consider whether the trustees' claim is time-barred under the 10-year longstop limitation in s 393 of the Building Act 2004, s 4(1) of the Limitation Act 1950 and s 11 of the Limitation Act 2010.

Viewing of hearing

The courtroom is open to the public.

This hearing of the appeal will also be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Kós	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

Counsel

- Louise Buchanan, Keith Marshall and Alistair Donald as trustees of the Buchanan Marshall Family Trust (Appellants): A R Shaw and L C L Yong
- Tasman District Council (Respondent): C M Meechan KC and A C Harpur

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2024\] NZCA 133](#) (26 April 2024)

Supreme Court leave decision: [\[2024\] NZSC 103](#) (20 August 2024)