



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

5 MARCH 2025

MEDIA RELEASE

WHANGĀREI DISTRICT COUNCIL v MALCOLM JAMES DAISLEY

(SC 59/2024)

Hearing in the Supreme Court Tuesday 18 March – Wednesday 19 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

This case arises from a dispute concerning a quarry on Mr Daisley's property near Whangārei. Mr Daisley purchased the property in 2004. Around 16 years earlier, in 1988, the Whangārei District Council had issued a land use consent authorising quarrying on the property. That consent was not disclosed in a Land Information Memorandum (LIM) obtained by Mr Daisley's lawyers in connection with the property's purchase, even though a reasonable search of the Council's records would have located the consent without difficulty.

Mr Daisley knew the quarry had been worked commercially for many years and believed it enjoyed existing use rights. He prepared to work the quarry. However, after his neighbours complained to the Council, officers from the Council's monitoring team issued abatement and infringement notices with a view to stopping Mr Daisley quarrying. Mr Daisley responded that the quarrying was longstanding and authorised by the Council. The Council's officers did not search Council records to verify Mr Daisley's claims, instead insisting that the use was not protected by a land use consent nor existing use rights; they maintained this view for years.

The 1988 consent was only discovered and disclosed to Mr Daisley on 22 September 2009. The Council did not immediately withdraw enforcement action already underway in the Environment Court. Almost six years later, on 14 August 2015, Mr Daisley sued the Whangārei District Council in negligence and misfeasance in public office.

The dispute

The Council does not dispute that it breached its duty of care by repeatedly failing to search its records in connection with its repeated enforcement efforts against Mr Daisley. The issues in dispute are broadly: whether Mr Daisley's claims are time-barred under the Limitation Act 1950, with most of his losses being incurred over six years before he filed proceedings;

whether the Council is liable for misfeasance in public office; and, if it is liable for misfeasance, whether exemplary damages are appropriate (in addition to compensatory damages).

High Court

On 10 June 2022, Mr Daisley succeeded on both causes of action in the High Court. The Court found the actions were not time-barred because time did not begin to run until 22 September 2009; or, alternatively, limitation was postponed to that date because the Council concealed the existence of the 1988 consent by fraud within the special meaning of s 28(b) of the Limitation Act 1950. Mr Daisley was awarded around \$4 million in compensatory damages for negligence and \$50,000 in exemplary damages for misfeasance in public office.

Court of Appeal

The Council appealed to the Court of Appeal. On 15 May 2024, its appeal was allowed in part. The Court of Appeal upheld the High Court's finding that time did not begin to run until the consent was disclosed on 22 September 2009, though for different reasons. The Court of Appeal considered the Council's failure to search its records was subjectively reckless and therefore unconscionable, amounting to fraudulent concealment under s 28(b) of the Limitation Act 1950. However, the Council succeeded in its appeal regarding misfeasance in public office. The Court of Appeal found that the Council officers' subjective recklessness as to the existence of the consent did not extend to recklessness with respect to their lawful authority to take enforcement action. On that basis, the Court of Appeal overturned the High Court's finding that the Council was liable for misfeasance in public office and, in turn, the exemplary damages award.

The Council applied to bring a further appeal to the Supreme Court against the Court of Appeal's decision. Mr Daisley applied to cross-appeal.

This appeal

On 25 September 2024, the Supreme Court granted the parties' applications. The approved question is whether the Court of Appeal was correct to dismiss the appeal against the High Court's finding that the Council was liable in negligence and allow the appeal against the High Court's finding that the Council was liable for misfeasance in public office, for which it should pay exemplary damages.

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 Ellen France	The Hon Justice O'Regan
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Judges as seen from the public gallery

Counsel

- Whangārei District Council (Appellant/Cross-Respondent): *D H McLellan KC and S O H Coad*
- Malcolm James Daisley (Respondent/Cross-Appellant): *J A Farmer KC and D J MacRae*

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. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:
Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2024\] NZCA 161](#) (15 May 2024)
Supreme Court leave decision: [\[2024\] NZSC 123](#) (25 September 2024)

