

IN THE SUPREME COURT OF NEW ZEALAND

**SC 19/2009
[2009] NZSC 37**

BETWEEN SECURITIES REGISTRY LIMITED
 Applicant

AND VIRGINIA GOMES
 Respondent

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: M C Black for Applicant
 S M Hunter for Respondent

Judgment: 28 April 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed, with costs of \$2,500 to the respondent.

REASONS

[1] The applicant, a financier, contended that the respondent was liable to it in negligence and under the Fair Trading Act 1986 for advising that, in satisfaction of a condition of an advance, a vendor had been “paid” a substantial sum by a purchaser and that that amount was “being held” as a deposit. The respondent was the accountant to the vendor and the purchaser, which were associated companies. The purchaser had in fact set off its obligation to pay the deposit against an existing debt owed to it by the vendor. The claim thus turned on whether, in those circumstances, it was correct to say that the deposit had been “paid” and was “being held”. The applicant now accepts that the deposit was “paid” but maintains that it was not “being held”.

[2] The High Court held that there was no obligation under the sale agreement to hold the deposit until settlement, nor had the applicant stipulated that it should be. One Judge in the Court of Appeal agreed with this conclusion; one did not. As this Court pointed out in *Media 1 Ltd v Shanks*,¹ the interpretation of the words of a particular letter does not raise any question of general or public importance or general commercial significance and differing conclusions may simply demonstrate that there is room for argument about which view is correct.

[3] The High Court and the majority of the Court of Appeal also held that the applicant did not rely on the words of the respondent. There is no sufficient basis for this Court to adopt the exceptional course of granting leave to appeal against that concurrent finding of fact, the effect of which was to defeat the applicant's claim even if it were to succeed on the construction point.

[4] The application for leave to appeal is therefore dismissed, with costs of \$2,500 to the respondent.

Solicitors:
Craig Griffin & Lord, Auckland for Applicant
Gilbert Walker, Auckland for Respondent

¹ [2008] NZSC 35.