

IN THE SUPREME COURT OF NEW ZEALAND

**SC 46/2006
[2006] NZSC 69**

BETWEEN AMALTAL CORPORATION LIMITED
Appellant

AND MARUHA CORPORATION AND ANOR
Respondents

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: A R Galbraith QC and B R Latimour for Appellant
J G Miles QC and Z G Kennedy for Respondents

Judgment: 6 September 2006

JUDGMENT OF THE COURT

- A. Amaltal's application for leave to appeal is dismissed with costs to the respondents of \$2,500.**
- B. Maruha Corporation and Maruha (NZ) are granted leave to appeal.**
- C. The approved grounds of the Maruha appeal are:**
 - (i) Whether Amaltal was in breach of any fiduciary duty owed by it to Maruha.**
 - (ii) Whether the Court of Appeal erred in reducing the damages awarded by the High Court to Maruha.**

REASONS

[1] Amaltal has been found to have committed the tort of deceit. It does not raise any further challenge to that finding. It has sought leave to appeal to this Court on the grounds that the wrong legal test has been applied under s 28 of the Limitation Act 1950 to the tort of deceit and that the Court of Appeal has misdirected itself in

law as to the purpose and effect of s 28 in relation to deceit and other causes of action involving fraud or concealment by fraud.

[2] Amaltal submits that the appropriate test under s 28 is to be found in the decision of the English Court of Appeal in *Paragon Finance plc v DB Thakerar & Co (a firm)*.¹ Assuming that to be so, we consider, however, that the argument that the Court of Appeal either misunderstood or misapplied what was said in that case or failed to have proper regard to the burden of proof has no prospect of succeeding. The approach taken by the Court of Appeal is both orthodox and convincing.

[3] The proposed argument concerning an alleged misdirection on the purpose of the section is equally unmeritorious. It raises no question of law and amounts to nothing more than a collateral attack on the concurrent factual conclusions of the Courts below concerning deceit.

Solicitors:
Bell Gully, Auckland for Appellant
Minter Ellison Rudd Watts, Auckland for Respondents

¹ [1999] 1 All ER 400.