

IN THE SUPREME COURT OF NEW ZEALAND

**SC 44/2006
[2006] NZSC 71**

BETWEEN	ZENTRUM HOLDINGS LIMITED AND NGAHEMI PROPERTIES LIMITED (AS THE ZENTRUM HOLDINGS GROUP) Applicants
AND	THE COMMISSIONER OF INLAND REVENUE Respondent

Court: Tipping and McGrath JJ

Counsel: G D Clews for Applicants
R J Ellis for Respondent

Judgment: 19 September 2006

JUDGMENT OF THE COURT

[1] The applicants are granted leave to appeal on the ground:

Whether the principle in the decision of the Court of Appeal in *CIR v Farnsworth* [1984] 1 NZLR 428 continues to apply under the tax legislation applicable to the issues in dispute and, if so, whether it precludes the Commissioner from arguing on appeal in the High Court that the applicants' transactions were a sham.

[2] Leave is not given on proposed ground 1(d) in the application, which is whether s 108 of the Tax Administration Act 1994 bars the Commissioner from advancing the argument that the transactions were a sham. It is not sufficiently arguable to meet the requirements of s 13(1) of the Supreme Court Act 2003 that the

Commissioner's position, if upheld, would ultimately lead to an increase in the "amount assessed" subject to the time bar under s 108 of the 1994 Act.

Solicitors:

Hunt Edward Worker, Orewa for Applicants

Crown Law Office, Wellington for Respondent