



## Supreme Court of New Zealand

18 August 2008

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**THOM V DAVYS BURTON  
(SC 62/2007 [2008] NZSC 65)**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

This appeal concerns the question of whether a claim in negligence against a solicitor is time-barred by s 4 of the Limitation Act 1950. The respondent solicitors were negligent in preparing and advising the appellant, Mr Thom, as to his wife's execution of a matrimonial property agreement.

A cause of action in negligence arises when the plaintiff first sustains actual loss attributable to a breach of duty. The Supreme Court has today upheld the result in the Court of Appeal and dismissed Mr Thom's appeal asserting that his claim was not barred by the Limitation Act 1950. It held that Mr Thom suffered actual loss upon execution of the agreement on a basis that did not comply with the requirements of the Matrimonial Property Act 1976. Without such compliance the agreement was void. The Court rejected the argument

put forward by Mr Thom that it was only when the matrimonial property was divided by the Family Court and it refused to give effect to the void agreement that he suffered damage and the cause of action accrued. Since the agreement had been executed more than six years before Mr Thom brought a claim in negligence against his solicitors, it was barred by s 4 of the Limitation Act.

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