

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 43/2007  
[2009] NZSC 40**

BETWEEN                      BEN NEVIS FORESTRY VENTURES  
   LIMITED & ORS  
   Appellants

AND                              COMMISSIONER OF INLAND  
   REVENUE  
   Respondent

**SC 44/2007**

BETWEEN                      ACCENT MANAGEMENT LIMITED &  
   ORS  
   Appellants

AND                              COMMISSIONER OF INLAND  
   REVENUE  
   Respondent

Court:                      Elias CJ, Tipping, McGrath, Gault and Anderson JJ

Counsel:                      C T Gudsell for Appellants in SC 44/2007  
   D J White QC and R J Ellis for Respondent

Judgment:                      13 May 2009

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**JUDGMENT OF THE COURT (PARTIAL RECALL APPLICATION)**

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[1]     The Commissioner of Inland Revenue has applied for recall of paragraphs [152] – [155] of the reasons for judgment delivered on 19 December 2008. Specifically the order sought is one “recalling and omitting or amending” those

paragraphs. The application is brought primarily because in the identified paragraphs reliance was placed on the decision of the Court of Appeal in *Commissioner of Inland Revenue v V H Farnsworth Ltd*<sup>1</sup> but no reference was made to the more recent decision of the Court of Appeal in *Commissioner of Inland Revenue v Zentrum Holdings Limited*.<sup>2</sup> No reference was made to either decision in argument. The Commissioner points out that *Zentrum* held that *Farnsworth* had no application in tax litigation that is preceded by the new disputes process under Part IVA of the Tax Administration Act 1994.

[2] Inadvertently therefore this Court has created uncertainty as to whether *Zentrum* is a correct statement of the law. The reasons given in paragraphs [152] – [155] should not be regarded as representing this Court’s view of the correctness or otherwise of either the *Farnsworth* or the *Zentrum* cases in the light of Part IVA.

[3] We consider this clarification of the position is all that is necessary and that there is no need to order the omission or amendment of paragraphs [152] – [155] of the reasons for judgment. The problem identified above had no ultimate bearing on the disposition of the matter under consideration in the paragraphs concerned, nor did it have any bearing on the disposition of the appeal itself. The Commissioner’s application is therefore dismissed. We make no order for costs.

Solicitors:  
Wynyard Wood Solicitors, Auckland for Appellant in SC 44/2007  
Crown Law Office, Wellington for Respondent

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<sup>1</sup> [1984] 1 NZLR 428 (CA).

<sup>2</sup> [2007] 1 NZLR 145 (CA).