

IN THE SUPREME COURT OF NEW ZEALAND

**SC 6/2009
[2009] NZSC 11**

BETWEEN	BEVERLEY RAWLEIGH Applicant
AND	DEREK MAXWELL TAIT Respondent

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: B P Henry for Applicant
M Ring QC for Respondent

Judgment: 17 February 2009

JUDGMENT OF THE COURT

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

REASONS

[1] The proposed appeal concerns a claim for damages for breach of fiduciary duty by a solicitor.

[2] A husband and a wife sought advice from a solicitor, whom neither had previously consulted, about entry by both of them into a guarantee relating to a borrowing by a company of which the husband, but not the wife, was a director and shareholder. The solicitor, who is the respondent, advised both of them against signing the guarantee and repeated that advice to the wife, the present applicant, when he saw her alone. She executed the guarantee after signing an acknowledgement to the solicitor recording his negative advice and confirming that she wished to proceed "whether you witness it or not, by obtaining another witness if necessary."

[3] The applicant suffered a substantial loss when the guarantee was enforced. She asserts that she signed the guarantee because of the undue influence of her husband which would have become apparent if the solicitor had explained that, because he was also acting for her husband in the transaction, he had a conflict of interest.

[4] She made no claim against the respondent solicitor in negligence but said that she suffered loss as a result of that breach of fiduciary duty.

[5] The respondent admits the breach of duty but has successfully argued in both Courts below that it was not causative of the applicant's loss because she would have given the guarantee even if the nature of the solicitor's conflict of interest had been pointed out to her.

[6] The case turns on its own facts which were the subject of concurrent findings below¹. We agree with counsel for the respondent that the applicant's submissions are misconceived. They do not persuade us that the Court of Appeal may have erred in law or that there is any appearance of miscarriage of justice. We agree with counsel for the respondent that the case principally relied upon for the applicant, *Hilton v Barker Booth and Eastwood (a firm)*² does not support the proposed argument.

Solicitors:
Dennis Gates, Whangaparoa for Applicant
Duncan Cotterill, Nelson for Respondent

¹ *Rawleigh v Tait* [2008] NZCA 525; *Rawleigh v Tait*, (unreported, High Court, Wellington, CIV-2003-485-1924, Mallon J, 19 October 2007).

² [2005] 1 All ER 651 (HL).