



Supreme Court of New Zealand

5 March 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

MARLBOROUGH DISTRICT COUNCIL v ALTIMARLOCH JOINT VENTURE LIMITED & ORS SC 33/2010
VINING REALTY GROUP LIMITED v ALTIMARLOCH JOINT VENTURE LIMITED & ORS SC 40/2010
GASCOIGNE WICKS v ALTIMARLOCH JOINT VENTURE LIMITED & ORS SC 41/2010

[2012] NZSC 11

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.

In 2004 Mr and Mrs Moorhouse sold a block of land in Marlborough to Altimarloch. In the course of doing so their agents, Vining Realty and Gascoigne Wicks, misstated the quantity of water available to the land pursuant to various water rights. The availability of water in the quantities represented was important to Altimarloch as it proposed to establish a vineyard on the land. The shortfall was not apparent until after the sale had gone through and the planting operations were underway. Before committing itself to the purchase, Altimarloch had obtained a Land Information Memorandum (LIM) from the Marlborough District Council in which the same misstatement about the water rights appeared. Altimarloch sued the Moorhouses and the Council for damages on account of the missing water rights. The Moorhouses brought Vining Realty and Gascoigne Wicks into the proceedings as they had been responsible for the misstatements.

Four issues arose for determination in the Supreme Court.

The first was whether the Council owed Altimarloch a duty of care when it negligently made the misstatement about the water rights in the LIM. Only if a duty of care was owed could Altimarloch recover damages from the Council for its negligence. The Supreme Court has unanimously upheld the conclusion of the Courts below that the Council did owe Altimarloch a duty of care when preparing and supplying the LIM.

The second issue concerned whether the Council's negligence had caused Altimarloch any loss. The Council argued that as Altimarloch could recover its losses in full from the Moorhouses, its negligence had not caused Altimarloch any ultimate loss. The Court, by a majority, has rejected this argument, holding that both the Moorhouses and the Council caused loss to Altimarloch as a result of the misstatement made by or on behalf of each of them.

The third issue was whether the Moorhouses could recover any contribution from the Council towards the amount they are obliged to pay Altimarloch by way of damages. This issue arose because the Moorhouses and the Council were not joint tortfeasors. The Moorhouses are liable to Altimarloch for breach of contract whereas the Council is liable to Altimarloch for the tort of negligence. By a majority the Supreme Court has held that in the circumstances of the case the Council cannot be ordered to pay anything to the Moorhouses by way of contribution to what they have to pay Altimarloch.

The fourth and final issue concerned the correct measure of the damages payable by the Moorhouses to Altimarloch. The Moorhouses contended that the correct measure was the difference between the value of the land with the stipulated amount of water and its value with the lesser amount of water they were able to supply. This difference amounted to \$400,000. Altimarloch argued that the correct measure was that fixed below. This measure was based on the cost to Altimarloch of acquiring additional water rights and constructing a dam to bring the total amount of water available up to what the Moorhouses had contracted to supply. By a majority the Court has held that this latter measure was, in all the circumstances, a reasonable response to the Moorhouses' breach of contract and the damages awarded on that basis amounting to about \$1.1m should be confirmed.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545