

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 133/2024
[2025] NZSC 57

BETWEEN	VISCOUNT INVESTMENT CORPORATION LIMITED Applicant
AND	MATVIN GROUP LIMITED First Respondent
	HOBSONVILLE DEVELOPMENTS LIMITED Second Respondent
	CROWN FINANCE LIMITED Third Respondent
	CROWN ASIA PACIFIC GROUP LIMITED Fourth Respondent

SC 134/2024

BETWEEN	CROWN FINANCE LIMITED Applicant
AND	MATVIN GROUP LIMITED First Respondent
	HOBSONVILLE DEVELOPMENTS LIMITED Second Respondent
	VISCOUNT INVESTMENT CORPORATION LIMITED Third Respondent
	CROWN ASIA PACIFIC GROUP LIMITED Fourth Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: D J Chisholm KC and B J Lawler for Applicant in SC 133/2024
T Nelson and P B Friedlander for Applicant in SC 134/2024
P J Dale KC and L T Meys for First and Second Respondents
No appearance for Fourth Respondent

Judgment: 26 May 2025

JUDGMENT OF THE COURT

- A The applications for leave to appeal are dismissed.**
- B The applicants must pay the first and second respondents one set of costs of \$2,500.**
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REASONS

[1] In July 2013 Matvin Group Ltd approached Crown Finance Ltd to finance its acquisition of a 4.5 ha block of land at 122 Hobsonville Road. Matvin sought to develop the property and had entered into a conditional sale and purchase agreement. An associated company, Hobsonville Developments Ltd, was the nominated purchaser. In October 2013, Matvin accepted an indicative loan offer from Crown Finance. However, the final loan terms were significantly more onerous, and Matvin was unwilling to agree to them. Matvin sought an extension from the vendor to pay the deposit to negotiate terms or source financing elsewhere.

[2] Crown Finance and Viscount Investment Corp Ltd are associated companies. Via a common director, Viscount came to know the terms of Matvin's agreement with the vendor and its due diligence materials. Viscount made an unconditional offer for the property on essentially the same terms as Matvin. The vendor cancelled the agreement with Matvin and accepted Viscount's offer. Viscount developed the property, at a substantial profit.¹

[3] Matvin and Hobsonville Developments brought proceedings in the High Court in 2019 and sought, in broad terms, an account of profits based in breach of

¹ We note it is not clear where the profits lie.

confidence, breach of fiduciary duty and Viscount's dishonest assistance of the latter.² They also sued a third associated company, Crown Asia Pacific Group Ltd. They succeeded in all respects against Crown Finance and Viscount, but not Crown Asia. The High Court rejected a defence of "laches, acquiescence and delay" and ordered an account of profits.

[4] The Court of Appeal upheld the High Court's determinations that Crown Finance and Viscount had breached a duty of confidence, that they could not make out their pleaded defence and that an account of profits was an appropriate remedy.³

[5] The Court of Appeal also found that the High Court erred in finding that Crown Finance owed a fiduciary duty and Viscount dishonestly assisted its breach, and it dismissed Matvin's cross-appeal in respect of Crown Asia's liability.

[6] Viscount and Crown Finance seek leave to appeal in respect of the conclusions noted above at [4].

Proposed appeals and submissions

[7] The applicants assert an incongruity between the Court of Appeal's conclusions (a) that there was no fiduciary relationship between Crown Finance and Matvin and (b) that there was one of confidence. They describe the imposition of a duty of confidence as an effective restraint of trade. They say the Court of Appeal wrongly held that the applicants' laches defence could not be made in respect of a claim brought within the statutory limitation period and that it failed to consider their argument that a potential claimant cannot "wait and see" if it would prosper. They also raise various matters that they say ought to have been considered by the Court of Appeal before it decided an account of profits was appropriate, mostly connected with the commercial (and not fiduciary) relationship between the parties.

² *Matvin Group Ltd v Crown Finance Ltd* [2022] NZHC 2239 (Duffy J) [HC judgment].

³ *Crown Finance Ltd v Crown Asia Pacific Group Ltd* [2024] NZCA 614, [2024] NZCCLR 487 (Gilbert, Katz and Wylie JJ) [CA judgment].

[8] The applicants contend that the proposed appeals raise issues of general or public significance and general commercial significance.⁴ They submit the grounds of the proposed appeals raise matters that ought to be clarified, including in the particular context of commercial relationships involving information sharing. As to remedy, they invite us to consider the extent and variation of the Supreme Court of the United Kingdom’s analysis in *Rukhadze v Recovery Partners GP Ltd*—indicative, they say, of the principles relevant to the proposed appeals.⁵

Our assessment

[9] All aspects of the proposed appeals turn on the application of established principles to the present case. We are not convinced there is any need to examine nor clarify those principles. The appeals would therefore turn on competing contentions as to issues of fact, on which there are now concurrent findings in the Courts below.

[10] There is nothing particular about the commercial context of the parties’ relationship to warrant departure from settled breach of confidence or account of profits principles. As to the latter, the applicants’ arguments are best made, if at all, at the hearing directed to determine the account of profits. We do not consider *Rukhadze* requires consideration by this Court, noting that it concerned the scope of the fiduciary duty to account, not the account of profits remedy.⁶ Finally, we do not discern error in the analysis below of the proposed equitable defences. It is not therefore necessary in the interests of justice for this Court to hear and determine the proposed appeals.⁷

Result

[11] The applications for leave to appeal are dismissed.

⁴ Senior Courts Act 2016, s 74(2)(a) and (c).

⁵ *Rukhadze v Recovery Partners GP Ltd* [2025] UKSC 10, [2025] 2 WLR 529.

⁶ At [21] per Lord Reed P, Lord Hodge DP, Lord Briggs and Lord Richards SCJJ.

⁷ Senior Courts Act, s 74(1).

[12] The applicants must pay the first and second respondents one set of costs of \$2,500.

Solicitors:

Lawler & Co Ltd, Auckland for Applicant in SC 133/2024

Friedlander & Co Ltd, Auckland for Applicant in SC 134/2024

Neilsons Lawyers Ltd, Auckland for First and Second Respondents