



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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4 JUNE 2026

**MEDIA RELEASE**

WHANGAREI DISTRICT COUNCIL v MALCOLM JAMES DAISLEY

(SC 59/2024) [2026] NZSC 72

**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 Judicial Decisions of Public Interest: [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).

**What this judgment is about**

Section 4 of the Limitation Act 1950 provides that actions in tort must be brought within six years from the date on which the cause of action accrued. Section 28(b) provides an exception to that rule where the right of action is concealed by the fraud of the defendant. This judgment concerns whether the s 28(b) exception was engaged in this case.

**Background**

This case concerns claims against the appellant, the Whangarei District Council, for negligence and misfeasance in a public office in relation to enforcement action taken by the Council to restrict quarrying on the respondent Mr Daisley’s property between early 2005 and mid 2011. The Council issued abatement notices and pursued enforcement proceedings, asserting that Mr Daisley lacked resource consent. A 1988 land use consent (LUC) authorising quarrying was found in its archives in 2009. By then, Mr Daisley was compelled to sell the property, at a significant loss. He sued the Council in 2015, seeking damages.

**Lower courts and issue**

The High Court awarded just over \$4.25 million for negligence and misfeasance, but the Court of Appeal overturned the misfeasance finding and reduced the quantum of damages. The appeal and cross-appeal in this Court focused, respectively, on whether the limitation period had been extended due to fraudulent concealment by the Council of the respondent’s right of action under s 28(b) of the Limitation Act 1950 or by operation of the continuing breach doctrine; and on whether the Council’s conduct amounted to tortious misfeasance.

## Supreme Court decision

This Court, by a majority comprising Glazebrook, Ellen France, Kós and O'Regan JJ, has allowed the appeal in part, setting aside the finding that the appellant fraudulently concealed the respondent's right of action. With the exception of the award of damages of \$90,000 for loss of the value of the Knight Road property, and interest on that sum in the terms set out by the High Court, the damages awarded to the respondent have been set aside. The Court has unanimously dismissed the cross-appeal.

### *The majority reasons*

The majority held that fraudulent concealment for the purposes of s 28(b) of the Limitation Act 1950 requires that the defendant either possessed actual knowledge of the essential facts giving rise to the cause of action or was wilfully blind to them at the time of the alleged concealment (at [96]–[98]). Mere recklessness or negligence as to the existence of those facts is insufficient (at [99]).

Additionally, the defendant must have actually known, or been wilfully blind to the fact, that those essential facts amounted to a wrongful act, and decided nevertheless to conceal them. Again, mere recklessness or negligence as to the wrongfulness of the act will not suffice (at [121]–[125]).

Although attracted to the conclusion of the United Kingdom Supreme Court in *Potter v Canada Square Operations Ltd* [2023] UKSC 41, [2024] AC 679 that fraudulent concealment does not require the further element of a duty to inform or disclose the facts to the defendant, the majority found it was ultimately unnecessary to determine that issue in this case. It therefore expressed no concluded view as to whether there is a “duty to disclose” requirement in New Zealand law (at [86] and [130]).

In the present case the Court of Appeal found that the Council had not acted with actual knowledge or wilful blindness either of the essential facts or that its actions amounted to a wrongful act. The majority agreed that the evidence led to that conclusion. The Council's actions, while certainly (perhaps even grossly) negligent, did not meet the standard for equitable fraud and extension of the limitation period under s 28(b) (at [141]–[143]).

### *Winkelmann CJ's dissent*

Winkelmann CJ dissented. While agreeing with the majority that the cross-appeal should be dismissed, she would have upheld the Court of Appeal's finding that the Council fraudulently concealed Mr Daisley's right of action. She therefore would have upheld the quantum of damages awarded by the Court of Appeal.

Winkelmann CJ agreed with the majority that the word “fraud” in s 28(b) is used in the sense of equitable fraud (at [189]). However, in agreement with the Court of Appeal, she found that unconscionable, rather than dishonest, conduct is the standard for equitable fraud for the purposes of s 28(b) (at [191]).

Winkelmann CJ held that when assessing relevant conduct, the existence of a special relationship between the parties may be part of the circumstances giving rise to a finding of unconscionability, but unconscionability may also arise from conduct in circumstances where

there is no special relationship (at [192]). In a case of negligence such as the present, the essential issue is whether, in all the circumstances of the case, blameworthiness on the part of the defendant, above and beyond the blameworthiness inherent in the negligence, means that it would be unconscionable for the defendant to avail themselves of the statutory limitation defence (at [245]). In all the circumstances of this case, the Council's recklessness as to the existence of the essential facts giving rise to a cause of action was enough for the purposes of s 28(b) (at [193]).

## **Result**

The formal orders of the Court are as follows:

- A The appeal is allowed in part. The finding that the appellant fraudulently concealed the respondent's right of action is set aside.
- B The appeal in respect of the award of damages of \$90,000 for loss of the value of the Knight Road property, and interest on that sum in the terms set out by the High Court, is dismissed.
- C The damages awarded to the respondent are otherwise set aside.
- D The cross-appeal is dismissed.
- E The respondent must pay the appellant costs of \$45,000 plus usual disbursements. We allow for second counsel.

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