

IN THE SUPREME COURT OF NEW ZEALAND

SC 10/2017
[2017] NZSC 57

BETWEEN

CRAIG DUTHIE AND KIRSTEN
TAYLOR-RUITERMAN
First Applicant

DRK CHARTERED ACCOUNTANTS
LIMITED
Second Applicant

AND

DENISE MICHELLE ROOSE
First Respondent

DENISE DEVELOPMENTS LIMITED
Second Respondent

DMR DEVELOPMENT LIMITED
Third Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: G D Pearson and J K Scragg for Applicants
K J Crossland and J S Langston for Respondents

Judgment: 2 May 2017

JUDGMENT OF THE COURT

- A** The application for leave to appeal is granted (*Roose v Duthie* [2016] NZCA 600).
- B** The approved question is whether the Court of Appeal was right to find that the cause of action in tort accrued when the agreement for sale and purchase between Denise Developments Ltd and DMR Development Ltd was settled rather than when the agreement became unconditional.
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REASONS

[1] One of the issues raised in this appeal is whether the approach in *Mills v Commissioner of Inland Revenue*¹ or that in *Gasparin v Commissioner of Taxation*² is correct as to the timing of derivation of income in relation to a land transaction.

[2] We consider that we may be assisted by submissions from the Crown on this aspect, given the tax implications of the point at issue, and invite the Attorney-General to intervene if he wishes to do so. Accordingly, we direct the Registrar to bring the appeal to the attention of the Solicitor-General and to provide her with a copy of this judgment.

Solicitors:
Duncan Cotterill, Wellington for Applicants
Shieff England, Auckland for Respondents

¹ *Mills v Commissioner of Inland Revenue* (1985) 7 NZTC 5,025 (HC).

² *Gasparin v Commissioner of Taxation* (1994) 50 FCR 73.