



Six years and you're out

Court cases put spotlight on contents of Land Information Memorandum report.

THE PROPOSITION THAT REASONABLE DISCOVERABILITY APPLIES TO CASES CONCERNING COUNCILS THAT INVOLVE ANYTHING OTHER THAN BUILDING DEFECTS CASES HAS BEEN WELL AND TRULY PUT TO BED.

The Supreme Court has dismissed an application for leave to appeal by the owners of a property who relied upon the contents of a Land Information Memorandum (LIM) report when purchasing a property.

In August 2005, the Yorks entered into a sale and purchase agreement to buy a motel at Franz Joseph. The agreement was conditional on the Yorks obtaining a LIM report. The council provided a LIM report on 19 August 2005 and the Yorks settled the purchase of the property in September 2005.

When the council provided the LIM report, it knew the motel was situated close to an alpine fault. This information was not referred to in the report.

The Yorks first became aware of the existence of the alpine fault in November 2010 when the council publicised its alpine fault avoidance zone.

In July 2012 the Yorks brought a claim against the council in the High Court. They alleged the council was liable for negligent misstatement because at the time it issued the LIM report, the council knew of the existence of the alpine fault which posed a threat to the motel the Yorks had conditionally purchased. The Yorks maintained they paid more for the property than they would have paid had the alpine fault information been contained in the LIM report.

The council applied to strike out the Yorks' claim on the basis it was out of time. The council said the claim should have been brought within six years of the date the Yorks settled the purchase of the property in September 2005 – that is by September 2011. The Yorks resisted the strike out application on the grounds that they first became aware of

the existence of the alpine fault in November 2010, and so had six years from that date to bring their claim – that is until November 2016.

The threshold for succeeding with a strike out application is high; the defendant must prove the claim is clearly untenable and cannot possibly succeed. The Yorks persuaded the High Court that reasonable discoverability of the type found in Hamlin v Invercargill City Council and other building defects cases applied. The High Court refused to strike out their claim.

The council appealed the decision. The Court of Appeal accepted the council's argument that the Yorks' claim was time barred for limitation. This was because the Yorks suffered their loss when they paid too much for the property when they settled the purchase in September 2005. It was then that all the necessary factors existed for the Yorks to bring a High Court claim.

The Court of Appeal held that reasonable discoverability does not apply to a claim for negligent misstatement and that time started running even though the Yorks did not know they had suffered a loss or that they had a claim until after the six-year limitation period expired.

Undeterred, the Yorks applied to the Supreme Court for leave to appeal. That application was refused because the limitation principles as they applied to the facts in the Yorks' claim were well settled as a matter of law.

As a result, the proposition that reasonable discoverability applies to cases concerning councils that involve anything other than building defects cases has been well and truly put to bed. **LG**