

13 June 2025

Notice to Shareholders – First NZ Properties Limited

Court of Appeal Judgment. – 11 June 2025

The Court of Appeal released its decision in the case of *Investment Services Limited, Michael Millar & Paul Mephan v First NZ Properties Limited & Superstore Properties Limited* on 11 June 2025.

The appellants abandoned their appeal relating to the Kilmore Street gain fee of \$380,000 (plus GST) at trial but challenged their liability to pay the sum of **\$857,472.73 (plus GST)** to First NZ, being:

- \$450,000 (plus GST) for the Symonds Street gain fee; and
- \$407,472.73 (plus GST) for the Gravtec & Terra Firma fees.

In summary, the Court found that the First NZ Management Agreement contained an implied term, meaning that it continued beyond the sale of the last supermarket property in 2004, and applied to both Kilmore Street and Symonds Street. ISL was therefore entitled in contract to receive the Symonds Street gain fee of \$450,000 (plus GST) and entitled to rely on the indemnity provision in the Management Agreement.

Importantly, the Court of Appeal agreed with the High Court that Mr Millar's responsibilities as a director of First NZ "conflicted profoundly" with his responsibilities to ISL. Mr Millar did not separate his responsibilities to First NZ and ISL, nor did he consider how his conflicts of interest could be managed.

ISL's liability has been reduced to \$407,472.73 (plus GST), and consequently Mr Millar and Mr Mephan's liability also. All remaining appeal grounds were dismissed. First NZ has been ordered to pay Mr Mephan costs for a standard appeal, and usual disbursements. No costs orders were made in relation to ISL or Mr Millar.

Fee	Amount	Outcome of Appeal
Kilmore Street Gain Fee	\$380,000 plus GST	Abandoned at appeal due to queries from the Court about whether the insurance settlement amounted to a "sale", and therefore whether a gain fee would have been payable in any case.
Symonds Street Gain Fee	\$450,000 plus GST	ISL - appeal allowed in: contract, on the basis of an implied term negligence, on the basis that the indemnity clause applied Millar – appeal allowed due to ISL's appeal succeeding. Mephan – appeal allowed due to ISL's appeal succeeding.
Gravtec & Terra Firma	\$407,472.73 plus GST	ISL – appeal dismissed Millar – appeal dismissed
		Appellants' total liability reduced by \$450,000 (plus GST) .

The net effect of this to the High Court award is a reduction from \$1,420,692.73 (plus GST) by \$450,000.00 (plus GST) to \$970,692.73 (plus GST). This \$450,000.00 (plus GST) will need to be repaid by First NZ Properties Ltd to Investment Services Ltd.
Costs and disbursements for Mr Mephan have been awarded to him but are yet to be calculated.

The Appeal judgment is silent on interest, but it is likely the interest paid to us on the \$450,000 judgment sum will need to be paid back, and possibly also interest that has been accruing on that sum in the Duncan Cotterill trust account.

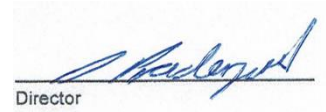
Our legal team are currently reviewing the judgement, and we await advice on the way forward.

If you have any queries, please contact info@fssmanagement.co.nz.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'John Murray', written over a horizontal line. Below the line, the word 'Director' is printed in a small, sans-serif font.

John Murray
Chair

A handwritten signature in blue ink, appearing to read 'Damien Prendergast', written over a horizontal line. Below the line, the word 'Director' is printed in a small, sans-serif font.

Damien Prendergast