IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CIV-2011-470-997
[2014] NZHC 853

BETWEEN	SUISSE INTERNATIONAL LIMITED Plaintiff
AND	BEVERLEY JEAN MONK Defendant

Hearing: 21-23 October 2013

Counsel: A M Swan for Plaintiff
P F Dalkie and D A Watson for Defendant

Judgment: 29 April 2014

JUDGMENT OF GODDARD J

This judgment was delivered by me on 29 April 2014
at 3.30 pm, pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors:
Jesperson and Associates, Auckland for Plaintiff
Reid Law, Auckland for Defendant

Introduction

[1] The plaintiff's claim has been reduced to two causes of action, the plaintiff having abandoned two of the original four causes of action during the course of the hearing. The original claims were for money had and received, fraudulent breach of trust, deceit, and unlawful means conspiracy. Only the first and third causes of action have survived to this point.

[2] For the plaintiff, Mr Swan identified the issues as being: first, whether the defendant was entitled to $500,000 she received from Suisse International Limited (Suisse); if not, whether Suisse's claim is outside the limitation period under the Limitation Act 1950.

[3] The $500,000 was paid to Mrs Monk on 21 November 2002. The case for Suisse is that its director, Mr Reginald Watt, only discovered in July 2007 that the $500,000 had been paid to Mrs Monk out of certain deposits received from the sale of a property in Willis Street (but unusually) before settlement. The plaintiff says it did not know the debt for which the $500,000 was paid had in fact already been satisfied on 30 August 2002. Had it known this, it certainly would not have paid Mrs Monk the same sum of money again.

[4] The plaintiff claims the $500,000 was money had and received by Mrs Monk to which she was not entitled and may have been paid on a mistaken basis and should be returned; or the money was paid in response to a knowingly false representation made by Mrs Monk upon which the plaintiff relied.

[5] As is clear from the critical dates, the claim is statute barred by virtue of s 4(1)(a) of the Limitation Act 1950, unless s 28 of the Limitation Act 1950 applies.[1]

[6] Section 28 of the Limitation Act 1950 provides:

> **28 Postponement of limitation period in case of fraud or mistake**
>
> Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

[1] Section 59 of the Limitation Act 2010 provides that if an action or right of action is based on an act or omission before 1 January 2011, the Limitation Act 1950 applies.

> (a) The action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or
>
> (b) The right of action is concealed by the fraud of any such person as aforesaid; or
>
> (c) The action is for relief from the consequences of a mistake,—
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

[7] The defendant's case is that s 28 of the Limitation Act 1950 does not apply and the claims are therefore statute barred; and that, in any event, the $500,000 was owed by the Watt group of companies to Mrs Monk's companies and the payment was duly authorised by the plaintiff.

[8] For reasons I shall shortly give, both of the plaintiff's claims are baseless, being fatally flawed on the facts. The plaintiff has proved neither money wrongly had and received by overpayment or otherwise, mistake or deceit. On that basis, the causes of action are also statute barred.

The claim

[9] In its statement of claim, the plaintiff has traversed the detail of its entering into an agreement for sale and purchase of a property at 8-14 Willis Street with a third party for $10,280,000, with settlement to occur on 5 December 2002. Settlement of this property subsequently occurred on or about 28 January 2003.

[10] The plaintiff claims it was not until around July 2007 that it (that is, Mr Watt) discovered that Mrs Monk, without its knowledge or consent, had been paid $500,000 on 21 November 2002 by its solicitor, Mr Bhanabhai, from the deposit held in trust by his firm, Dyer Whitechurch, on behalf of the plaintiff and prior to settlement of the sale of the property. The allegation is that both the fact of the payment and the nature of it were concealed by Mrs Monk and/or Mr Bhanabhai. Specifically the plaintiff pleads that:

> The defendant had never advanced any money to the plaintiff and/or was not owed any money by the plaintiff and was therefore not entitled to payment of the above sum.

[11] The first cause of action for money had and received pleads that the defendant wrongly and/or dishonestly deprived the plaintiff of the use of the $500,000.

[12] The third cause of action for deceit pleads that:

> The defendant on or before 21st November 2002 dishonestly and/or falsely represented to the plaintiff orally, in discussions with the plaintiff's solicitors DWB, that she was owed $500,000 by the plaintiff notwithstanding that the defendant was not owed any money by the plaintiff whatsoever ("the false representations");
>
> That the false representations were made orally or implied by conduct:
>
> Particulars:
>
> (i) Following those discussions, on 21st November 2002 the defendant instructed the plaintiff in writing, through the plaintiff's solicitors DWB, to pay her the sum of $500,000 as per the "discussions".
>
> (ii) On 21st November 2002 the plaintiff, through DWB paid the defendant $500,000.
>
> The defendant made the false representations with the intention that they would be relied on by the plaintiff and the plaintiff through its solicitors did rely on same.
>
> On 21 November 2002 the defendant received and accepted the sum of $500,000 from the plaintiff knowing that she was not entitled to same and utilised the money for her own benefit.
>
> That by reasons of the defendant's false representations the plaintiff suffered loss and damage in the sum of $500,000.

[13] The opening submission on behalf of the plaintiff was that Mrs Monk:

> never lent any money to Suisse personally. The best that could be said is that one of the defendant's companies, Richelieu Investments Limited, had collateral security over a property owned by Suisse in Willis Street, Wellington. That security was satisfied on or about 30 August 2002 …
>
> The defendant … took the stance that the $500,000 paid to her by Suisse, was to satisfy two loans her companies had allegedly made to an entity called Beresford Apartments Limited of $260,000 and $200,000 respectively …
>
> …
>
> … It was discovered that Beresford was not one of the Watt Group of Companies. It was incorporated in April 2002 by Mr Sharma.

[14] The important features of the plaintiff's case were highlighted by Mr Swan as follows, the fundamental plank being that Mrs Monk did not personally advance any money to Suisse and neither did her companies and thus Mrs Monk was not owed any money by Suisse:

> **Important Features of the $500,000 Payment**
>
> (a) No money was ever advanced to Suisse, by Ms Monk, Richelieu and/or Monk Investments;
>
> (b) All monies advanced to the various companies, were advanced by Richelieu and/or Monk Investments and not by Ms Monk personally;
>
> (c) Ms Monk had no registered security over the plaintiff's property;
>
> (d) The collateral mortgage was an unregistered mortgage Richelieu had taken, giving a priority sum of $500,000 which was collateral to other advances to other entities … Those collateral securities related to advances by Richelieu or Monk Investments of $252,000 and $274,000 and were both repaid on 30th August 2002 before the $500,000 was paid in November 2002.
>
> (e) Ms Monk was paid $500,000 into her personal bank account on 21 November 2002 following a two line instruction to DWB to pay her;
>
> …
>
> (h) Ms Monk was under no circumstances entitled to the $500,000 payment from the plaintiff in satisfaction of monies that might have been owed to her or Richelieu or Monk Investments by Beresford a non "Watt" company;
>
> …
>
> … whether money was owed by other entities, is of no consequence. Ms Monk was not owed any money by the plaintiff. She had no right to demand or receive $500,000 in her own name on this basis or on the basis that she was owed by other entitles.
>
> …
>
> Ms Monk was paid $500,000 on a simple two line instruction to DWB. … she had a discussion with Mr Sharma wherein she represented she was owed money and to which Mr Sharma agreed she could have $500,000 out of the deposit monies held on the purchase by the plaintiff. Ms Monk knew at that time she was not owed any money by the plaintiff.
>
> By instructing DWB to pay her the $500,000 when she knew it was not owing was unlawful. Mr Bhanabhai facilitated the payment when he would have known it was unlawful to pay the money not only because it wasn't owing but it was in contravention of the agreement for sale and purchase, and DWB's undertakings.

[15] The reference to the $500,000 being paid out of deposit monies in contravention of the agreement for sale and purchase and Dyer Whitechurch & Bhanabhai's undertakings, is a reference to the following clause in the agreement for sale and purchase:

> 18. Deposits
>
> a) The deposit shall be held by the vendor solicitors until settlement and all caveats are withdrawn and evidence of the same is provided to the purchasers solicitors.

The business relationship between the Watt group of companies and the defendant's companies

[16] The manner in which the parties did business over a period of years is of fundamental importance to this case. Also of fundamental importance was the manner in which Mr Watt organised and ran the Watt group of companies. I am satisfied that the Watt group of companies included the company named Beresford and that it is totally implausible for the plaintiff or Mr Watt to contend otherwise. The history of Mr Watt, his group of companies and the manner in which he conducted his business through these companies is telling.

[17] Mr Watt was in the business of a "property trader". His modus operandi, on sourcing a potential property for trading, was to form a company for that purpose. Many such companies were formed, usually with each company owning only one property. Each company had a different name, no doubt relevant to the transaction concerned. Mr Watt was the sole director of all of these companies up until the time of his bankruptcy and the shares in each of the companies were held by him as trustee of one of his discretionary family trusts; or held jointly by him and his solicitor, Mr Bhanabhai, as trustees of a family trust. In every case Mr Watt was the sole beneficiary.

[18] Mr Watt was adjudicated bankrupt on 25 July 2001. At the time he had creditors to whom he owed around $20 million. The day before he was made bankrupt, he took steps to appoint Mr Sharma, his finance manager, as director of all of the Watt group companies then in existence. Mr Sharma also became the shareholder of each of the companies, on the basis that he would hold the shares on

Mr Watt's behalf until he came out of his bankruptcy. Mr Sharma's memory is that there were at least 20 such companies in existence at the time. Mr Watt's memory is of about 25 or 26 such companies. The trustees of the Watt family trusts became Mr Sharma and Mr Bhanabhai, with Mr Watt the sole beneficiary in each case. In respect of Suisse, both Mr Sharma and Mr Bhanabhai were the shareholders of the company and they held the shares in trust for Mr Watt.

[19] Mr Sharma's evidence, which I accept in its entirety, was that after Mr Watt went into bankruptcy "nothing changed, it was business as usual". Mr Sharma said Mr Watt continued to be actively involved in the business of his companies. He still worked in the office every day and was paid for his services as a manager. Mr Sharma described the continuation of the business in this manner as "seamless".

[20] When Mr Watt came out of bankruptcy on 25 July 2004, he did not immediately reappoint himself as director of his companies, although he accepted under cross-examination that he could have done so. It appears his brother was appointed for a period of time until Mr Watt elected to resume directorship of his companies on 14 July 2006. It also appears that Mr Watt's brother may not have been entirely fit for purpose. In his evidence, Mr Watt accused Messrs Sharma and Bhanabhai of having transferred the directorship of Suisse to his brother because they had "problems with GST" but there was no evidence corroborative of this; nor did the accusation appear to have any relevance to Mrs Monk or her companies. I also note in passing that Mr Watt has attempted to sue Mr Sharma unsuccessfully; and has reported Mr Bhanabhai and Mr Somervell (who acted for Mrs Monk's companies) to the Law Society in relation to complaints of theft, which apparently found no traction.

[21] As stated, the way in which the parties conducted their business arrangements is of fundamental importance. The Watt group was run as one large single unit. Money advanced to one company for financing purposes was not necessarily repaid by that company. The money was simply repaid from whichever company was in funds at the time repayment was due or demand made. Loans were rolled over and transferred between the companies and most were heavily cross-collaterally secured. The securities changed according to whether particular companies did or did not

have assets. Internally, the Watt group transferred money around between its own entities.

[22] In some instances, the loans were poorly recorded and little documentation was put in evidence.

[23] The companies owned by Mrs Monk and her late husband, namely, Richelieu Investments Limited and Monk Investments, were a main source of funding for the Watt group of companies, especially where second or third tier lending was required. By the time of Mr Watt's bankruptcy in 2001, there was an established relationship between Mrs Monk's companies and the Watt group as lender and borrower. The loans were generally on an interest only basis. Automatic payments for the interest were nominally to have been made by one particular company but that did not prove to be the rule. Interest payments, when made, simply emanated from whichever company in the Watt group was in a position to make payment at the time. Thus, repayment of the loans could come from any company within the Watt group. The same was so with repayments of loan capital. This pattern and the modus is crystal clear from the schedules of borrowing and lending over the period 2000 to November 2002, the critical period in this case. It was also the pattern and modus that continued after November 2002, right up until late 2004/2005, during which many more loans were made by Mrs Monk and her companies to the Watt group of companies and on the same basis.

[24] It is clear that, essentially, Mrs Monk and her companies operated like an overdraft facility for the Watt group of companies: money was requested from her when needed and when forthcoming was applied to whichever property trading project was currently in train. The loans were repaid out of whichever project was in funds at the time that any repayment or interest was due or sought. Mr Sharma, in his evidence, described this modus, as it related to interest payments, as follows:

> Most of the loans from Mrs Monk's companies required interest to be paid by automatic payment. Usually, that would come from a Watt group company called Carpark 80. ... Even so, interest payments, when made, could have come from any company at all within the Watt group. It all depended on where I could get the money from. It was also quite common that if there was money in one company it would make interest payments for several other Watt group companies.

[25] Mr Sharma's evidence in this regard reflected Mrs Monk's own evidence about the relationship between her company and the Watt group of companies.

[26] Mr Sharma said all of Mr Watt's property interests were funded by debt and he relied on frequent trading to generate income and satisfied his creditors where and when he could, from whatever source of funds were available at the time.

Beresford Apartments Limited

[27] Beresford Apartments Limited (Beresford) was incorporated on 26 April 2002, while Mr Watt was a bankrupt. Thus he could not be appointed as a director of Beresford.

[28] Mr Watt prevaricated in his evidence and approach as to whether Beresford was a Watt group company controlled by him; or was not a Watt group company, but belonged to Mr Sharma. His inconsistency on this matter was reflected in the different suits which he initiated. In his suit against Mr Sharma, he claimed Beresford was a Watt group company. In the subject proceeding, he belatedly claimed that Beresford was not a company within the Watt group of companies, although originally he had included it as such in his brief of evidence.

[29] The shares in Beresford were held jointly by Mr Sharma and Mr Bhanabhai as trustees for the Watt Family Trust, of which Mr Watt was the sole beneficiary. That situation was never refuted at the hearing before me.

[30] Mr Sharma's evidence about Beresford's dealings with Mrs Monk's companies was as follows:

> In 2002 the Watt group (Beresford Apartments Limited) had entered into an agreement with the Auckland City Council to buy a building that required deposits to be paid in cash periodically as the contract shows. None of the companies had any money to pay the deposits. So, Beresford borrowed the money from Mrs Monk's companies. In 2002 there were two loans, one for $200,000.00 and another for $260,000.00. On both these loans I negotiated for Beresford that there would be no loans fees to be paid, and that they would be straight interest only. That was a good deal for Beresford because the usual loan fees were between about $7,500.00 and $15,000.00. Each of the loans was for a very short term, and repayable in early November 2002. The other thing was that since Beresford had no assets the security it could

> offer was pretty much non-existent. I notice that for example the agreement with the Council was offered to be mortgaged (that was obviously worthless) and there were also collateral securities such as fifth mortgages over other property in the Watt group.

[31] I am satisfied that Beresford was a Watt group company controlled by Mr Watt behind the scenes and that, as such, the Watt group received a material benefit when the payment reducing $500,000 of the group's indebtedness to Mrs Monk was made.

Was the payment both duly authorised and lawful?

[32] I refer again to Mr Sharma's evidence, he being in the best position to advise the Court of the situation in relation to this payment, albeit the event occurred some time ago. Of the continuing relationship between the Watt group and Mrs Monk's companies and the payment out of the $500,000, Mr Sharma said:

> There were many loans from Mrs Monk's companies after the end of 2002 obtained by the Watt group. There were collateral securities taken with these loans as well. Many of them were repaid from sources other than the actual Watt group company that had the loan in its name, so a loan to one company was very commonly paid out by another.
>
> This payment of $500,000.00 was one of many transactions between the Watt group and Mrs Monk's companies. It occurred in about the middle of the period over time from about 1999 until 2005 during which the parties did business together. It does not now sit in my memory any more than any other over the five or six year period.

[33] There is no contest that Mr Sharma was at the material time the duly appointed director of the plaintiff company and indeed of all companies in the Watt group. This could hardly be in issue, given Mr Sharma's appointments in each case were made by Mr Watt himself.

[34] Mr Sharma's clear and unequivocal evidence is that he authorised the payment of the $500,000 to Mrs Monk on account of loans due and owing to her by the Watt group. Beresford could not meet the payment due at the time and so another ready source within the group was found in accordance with usual practice. Expressly, Mr Sharma's evidence was:

> In mid-November 2002 the two loans to Beresford were due, and Beresford could not pay them.

> When the Suisse property at 8 Willis Street was sold I authorized the $500,000.00 payment. I cannot be certain now but think it was applied against the two loans then due from Beresford with interest, and the unpaid interest due on the $252,000.00 loan.

[35] The background events which led to the Beresford Street loans being satisfied out of the sale of the Suisse property were typical of how Mr Watt's property trading business was operated and were described by Mr Sharma as follows:

> In mid 2001 there was a loan from Richelieu Investments Limited to Australasian Investments Proprietory Limited ("AIPL") for $252,000.00 that we defaulted on. Initially, the loan was for a short term … That loan then got extended on June 15, 2001 after some negotiation.
>
> …
>
> AIPL owned a property in Wellington at 138 Victoria Street that was sold in mid 2002. The sale price was insufficient to be able to pay out the loan due to Richelieu, which was the $252,000.00 loan of 15 June 2001. … the mortgagee, was threatening a mortgagee sale. In addition to not having enough money on settlement to pay out the Richelieu loan, there was also going to be a shortfall on the second mortgage pay out to Gold Band.
>
> Gold Band also had collateral security over Gilmer Terrace, owned by NZ Serviced Accommodation Limited. Gilmer Terrace was going to be sold about the same time as Victoria Street.
>
> I spoke to Mrs Monk about the problem trying to get her to agree to release her security over Victoria Street in return for taking security over the Suisse property at 8 Willis Street. She knew about this property because I had mentioned it to her the year before when we had the problem with this loan initially, and could not repay it at the end of May. It appears as though the discussions went on for quite some time, but ultimately Mrs Monk agreed to release the AIPL security in return for security over Suisse. This appears from the [solicitors' letters; mortgage signed by Mr Sharma on behalf of Suisse; deed of priority; and deed of priority with all mortgagees of the Willis Street property except institutional lenders].
>
> …
>
> At some point around this time or slightly later Mrs Monk took out the balance due of the Gold Band mortgage. That was collateral over both Victoria Street and Gilmer Terrace. …
>
> By May 2002 Metropolis Car Parking Limited ("MCP") had gone into receivership … MCP's property at Greys Avenue was sold up and settlement took place on August 28, 2002. I have been shown the last minute changes made to the settlement figures on August 28, 2002 in which the loan for $260,000.00 was taken out and replaced with the loan for $252,000.00, but no interest was paid out on that loan. I have also been shown the actual amount paid. …

> In early September 2002 Beresford borrowed another $200,000.00 from Richelieu.

[36] In an earlier affidavit sworn on 2 March 2004, Mr Sharma had described with particularity how, when the Willis Street property was sold, the sale proceeds were distributed to the first five mortgagees of the property as per an account prepared by Dyer Whitechurch. Richelieu Investments had an unregistered fifth mortgage over the property. Nothing was available for payment out to the sixth mortgagee.

[37] Dyer Whitechurch's statement of account records: "Bank transfer to B J Monk part loan repayment $500,000". Mr Sharma, in his affidavit, confirms: "The fifth mortgagee, Richelieu Investments Limited (B J Monk), was paid $500,000 of the $540,000 due".

[38] The documentation supporting this payment and its authorisation was produced in evidence. It was clearly preceded by a great deal of discussion between Mrs Monk and Messrs Sharma and Bhanabhai about various advances made by her companies and the repayment of those and of interest and what the state of the 'running account' for the Monk monies was.

[39] Mrs Monk, unsurprisingly, has no actual recollection of precisely why she received the $500,000 from Suisse at the time. This is to be expected, given the passage of time between the payment out in 2002 and Mr Watt raising a hue and cry over it following his alleged 'discovery' of it in 2007. In line with Mr Sharma's recollection of the number of properties, transactions and securities that preceded the payment, set out in paragraph [30] by way of example, Mrs Monk said of the complicated and fluid nature of the arrangements:

> The [Australasian Investments Proprietory from Richelieu] loan was from Monk Trust, and repayable on demand … . There was to be a caveat lodged to protect an unregistered mortgage given over its property at 140-142 Victoria Street, Wellington. There is a note I sent to Brian [Somervell] on May 3, 2001 that records the loan was to have been repaid by about May 18 … . I do not recall any of the detail outside the note, nor do I remember the meeting with Reg Watt and Suren Sharma that I refer to. It can be seen from the note that various loans are referred to, and there is mention made of money being lent to enable the Watt Group (Suisse) to purchase 8 Willis Street (the Willis St property). The Willis St property is the plaintiff's property, the proceeds of sale from which I was eventually repaid the

> $500,000 which is the subject of this case. They also gave me a valuation of that property back then, because I refer to it in my note.
>
> Demand was made for repayment on June 7, 2001 … . It was extended by variation on June 15, 2001.
>
> This loan became very complex in terms of when it was repaid, and how it was secured. Until I read the papers for this case, and in particular the documents on Brian Somervell's file on the sale of Metropolis Carparking Limited ("MCP") I had thought it was included in the $500,000 payment that I received from Suisse on November 19, 2002. But now, having read through the documents from Brian Somervell's file about the MCP settlement and the payment made to my companies by the receiver of MCP, I think that it was in fact paid on the MCP settlement.

Payment of the $500,000 to Mrs Monk's companies on sale of the Suisse property at 8 Willis Street on 21 November 2002

[40] As set out above, by mid-November 2002, the two loans to Beresford were due and Mr Sharma authorised the payment of $500,000 from the proceeds of sale of the Willis Street property to Mrs Monk, which he believes from memory was applied against the loans due from Beresford with interest. There is no reason to disbelieve Mr Sharma in his recollection of matters, based on a logical reconstruction of the available documentation and his institutional knowledge of the workings of the Watt group of companies. Nor is there any reason to doubt Mrs Monk's recollection of matters, as best she has been able to give it.

[41] Mr Sharma, as sole director of the plaintiff company, authorised the payment out to Mrs Monk a couple of days before the money was paid over. The authorisation was given to Mr Bhanabhai as plaintiff's solicitor and he made a handwritten file note of the instruction. In it he records, "pay $500 to Bev Monk on a/c repayment to her of her loans". The file note is dated 19/11/02.

[42] On 21 November 2002 Mrs Monk sent email instructions to Mr Bhanbhai's legal executive confirming her bank account details (as discussed) for deposit of the $500,000.

[43] Westpac Bank's records show that the money was indeed transmitted from Dyer Whitechurch's account on 21/11/2002, recorded as "repayment" of "Part

loan L". Confirmation that the deposit had been lodged to Mrs Monk's account was faxed to her by the legal executive.

[44] Significantly, Mr Sharma said in evidence that payments were also made from the proceeds of the sale of the Suisse property in Willis Street to another creditor of the Watt group of companies, in settlement of debts due to that creditor from Watt companies other than Suisse. He said it was just part of the common practice. Certainly it paralleled Mrs Monk's situation.

[45] Of further significance was Mr Sharma's evidence that, in accordance with usual practice when settlement of a Watt property trading project was imminent, he and Mr Watt would invariably walk over to Mr Bhanabhai's firm together to discuss the settlement figures. Mr Sharma has no reason to believe that Mr Watt did not accompany him on the Suisse settlement in accordance with this usual practice.

Discussion

[46] The plaintiff has advanced a simplistic but totally untenable proposition which cannot succeed. The facts support neither of the remaining causes of action, which are time barred as well as meritless.

[47] The start and end point is that the plaintiff had actual knowledge of the payment of $500,000 to Mrs Monk on 21 November 2002, the payment having been duly authorised by its sole director, Mr Sharma. Mr Sharma was appointed by Mr Watt and was acting well within his responsibilities and in line with the customary practice of the Watt group when he authorised the payment. Mr Bhanabhai received the authorisation as the plaintiff's solicitor and actioned it accordingly.

[48] As Mr Dalkie put it:

> Mr Sharma was the sole director of the company as at the date of the payment. His authority to Mr Bhanabhai to make the payment is clearly the action of the company. Mr Sharma was the controlling mind of the company at the time the payment was made.

[49] Mrs Monk was likewise entitled to regard Mr Sharma as fully authorised to act on behalf of the plaintiff in settling indebtedness owed by the Watt group to her

and her companies. Nothing turns on the fact that the payment in this instance was to her personally and not to one of her companies. It was one and the same thing.

[50] Given the history of dealings between the Watt group of companies and Mrs Monk and her companies, nothing appears unusual about the repayment of the particular debt at issue. It was in line with the pattern of lending, established over the previous two-year period and which continued for a further two to three years, during which many more loans were made in the same manner by Mrs Monk and her companies to the Watt group of companies.

[51] I have already found that the Watt group of companies included Beresford and that it is totally implausible for Mr Watt to contend otherwise. While Beresford may have been incorporated during the period of Mr Watt's bankruptcy, the evidence clearly establishes that it was a company within the Watt group, as acknowledged by Mr Watt in separate litigation and in his original brief of evidence for this proceeding, which he altered. Mr Sharma's evidence, which I accept, was that during the period of his bankruptcy, Mr Watt continued to conduct "business as usual" and was in the office every day and being paid as a 'manager'. While the shareholders of Beresford were Mr Bhanabhai and Mr Sharma jointly, the shares were held in trust for a Watt family trust, of which Mr Watt was the sole beneficiary. For Mr Watt to now attempt to dissociate himself totally from Beresford and seek to characterise it as a "Sharma" company is, as Mr Dalkie put it, disingenuous to say the least.

[52] The reality is that Mrs Monk and her companies lent money to Mr Watt and his group of companies as a two or three-tier lender, often at short notice and not necessarily on a secured basis. As I found earlier, the arrangement operated similarly to an overdraft facility, with a running account kept of all outstanding loans and the balance of the loans. It is not insignificant that, at the time the $500,000 was paid to Mrs Monk against indebtedness by the Watt group, there was a total of almost $3 million owing to Mrs Monk. A schedule setting out the running account of the debt owing at that time is annexed to this judgment.

[53] The schedule reflects the pattern of dealing between the parties over the two-year period leading up to payment of the $500,000. Mr Sharma was well immersed in these dealings. The $500,000 was neither authorised or paid out by him on any mistaken basis. The money was owing and it is immaterial whether it was paid under a mortgage covering existing and future advances, or whether it was simply paid out on the authority of Mr Sharma in reduction of Watt group indebtedness.

[54] On the facts, the allegation of deceit would have had to involve Mr Sharma and Mr Bhanabhai as implicit in deceitful conduct by Mrs Monk. There is, however, no pleading that they were so involved and they are not joined as defendants. Nor is there any evidence to support such a contention.

[55] The claim in deceit is not only meritless, it is entirely misconceived and verging on the vexatious.

[56] Mr Dalkie's submission, that the plaintiff has conducted this case as though there were only ever one transaction between Mrs Monk and her companies and the plaintiff and the Watt group of companies, is apt. Mr Watt has attempted to pluck out this one transaction from four years of similar trading and to characterise it as fraudulent or as a mistaken blip.

[57] Mr Watt's claim that he could not with due diligence have discovered the payment of the $500,000 to Mrs Monk in November 2002 earlier than 2007 is a further hopeless aspect of this case. No credible basis has been established for such an assertion.

[58] In summary, the plaintiff has failed to establish that the money was not paid to Mrs Monk in discharge of obligations owed by the Watt group of companies to Mrs Monk and her companies. The evidence is that the money was not wrongly paid out, was not paid by mistake, and was authorised by Mr Sharma in full knowledge of the situation of indebtedness between the Watt group and Mrs Monk.

Result

[59] The plaintiff's claim is dismissed on the merits and is also statute-barred under the Limitation Act 1950.

Costs

[60] Counsel may submit memorandum as to costs.

Goddard J

DATE	LOAN	AMOUNT
August 22, 2000	to Pannive Nominees Limited to Mathison Holdings Limited [1 - 11/2]	$257,500.00** $207,500.00**
March 17, 2001	to Pannive Nominees Limited [28/2]	$55,000.00
March 19, 2001	to NZ Serviced Accommodation Limited (over 10 Gilmer Terrace, Wellington) [48/2; 49/2]	$217,000.00
May 4, 2001	to Australasian Investments Proprietory Limited (140 - 142 Victoria Street, Wellington.) [51/2; 64/2]	$252,000.00
May 23, 2001	NZ Serviced Penthouses Limited (No documents able to be located regarding this loan or whether it was repaid	$108,500.00
June 15, 2001	to Metropolis Carparking Limited (79 Greys Ave) [66/2]	$274,000.00
June 22, 2001	to Metropolis Carparking Limited (79 Greys Ave) [113/2]	$430,000.00
May 3, 2002	to Beresford Apartments Limited [121/2]	$260,000.00
May 10, 2002	to NZ Serviced Accommodation Limited [140/2]	$47,500.00
August 27, 2002	**Total owed, principal amounts only,**	**$2,109,000.00**

	ignores interest, penalty interest and loan fees	
August 28, 2002	Sale of Greys Ave MCP repaid the $274,000.00, the $430,000.00 and the $252,000 loan, plus penalty interest (except for the $252,000 loan). Note this payment included interest [279 - 280 / 2]	($1,160,920.83)
August 28, 2002	**Balance due to defendant**	**$948,079.20**
August 31, 2002	Short term loan of $300,000.00 on, repaid on September 20, 2002. Appears to have been no interest paid.	$300,000.00
September 6, 2002	to Beresford Apartments Limited	$200,000.00
September 20, 2002	August 31 loan repaid	($300,000.00)
September 26, 2002	Loan to Watt group of $479,000.00 (Cheque stub, bank statement)	$479,000.00
September 27, 2002	Transfer of Gold Band Loan [160/2]	$55,600.62
September 30, 2002	Transfer of Harts Loan [161 / 2]	$1,009,132.14
October 4, 2002	to Supersizes Limited [164, 165 /2]	$218,000.00
November 20, 2002	**Subtotal due**	**$2,909,811.90**
November 21, 2002	Payment in issue in this case	($500,000.00)
November 21, 2002	**Subtotal due**	**$2,409,811.90**