

**Wilbow Corporation (NZ) Ltd v Harrison Grierson Consultants Ltd 30/10/02,  
Master Faire, HC Auckland CP461/98**

Partially successful application to strike out parts of statement of claim - W entered into contract for purchase of partially completed sub-division upon receiving information from HG - W submitted if it had received proper information it never would have purchased land, and claimed damages arose - W claimed it relied on full report from HG given to them pursuant to initial oral agreement, and there are no clauses limiting liability in that report - W argued it was dealing with HG in that firm's personal capacity and not in any agency role on behalf of mortgagee or receiver - W submitted there was no evidence that either HG or O knew of exclusion clause, so they could not have relied on it - W proposed amendment that subsequent agreement was not new contract but merely fulfilled earlier arrangement - HG and O argued exclusion clauses in contract protected them from any liability for negligent misrepresentation - HG opposed amendment claiming W was trying to introduce new cause of action.

Held, if W wished to exclude disclaimer provisions from agreement it should have made it condition of contract - HG is specifically mentioned in disclaimer provision as gaining protection, and O also gained protection as he is encompassed by HG's designation - W's complaint of misrepresentation based on breaches of tort or contract are barred by disclaimers and are struck out - W's amendment is not barred as factual allegations remain same and in essence it is same contract, thus it is not struck out - application partially successful.