Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

BECA CARTER HOLLINGS & FERNER LIMITED v WELLINGTON CITY COUNCIL

(SC 11/2023) [2024] NZSC 117

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

The issue on appeal

This appeal concerns the operation of limitation periods in claims for contribution relating to building work and, specifically, the meaning and scope of s 393(2) of the Building Act 2004.

Background

Section 393(2) of the Building Act 2004, which is described as a "longstop" limitation, prevents a person from bringing "civil proceedings relating to building work" 10 years after "the date of the act or omission" on which those civil proceedings are based.

In August 2019, BNZ sued the Wellington City Council (the Council), seeking damages in relation to a building which was irreparably damaged in the 2016 Kaikōura earthquake. It is alleged that the Council was negligent in issuing certain consents and approvals in relation to that building. The Council denies liability.

However, in September 2019 the Council filed proceedings claiming against Beca Carter Hollings & Ferner Ltd (Beca) for contribution as a joint tortfeasor under s 17(1)(c) of the Law Reform Act 1936 (among other matters), in the event that it is found liable to BNZ. Broadly, this claim alleges Beca was negligent in issuing certain statements between 2007 and 2008 on which the Council relied in making its decisions relating to the relevant consents and approvals.

Beca applied for the Council's claim to be struck out on the basis that, due to the s 393(2) longstop, the Council was out of time to bring the claim — given it had been over 10 years since

the alleged negligent "act or omission". The Council says that s 393(2) does not apply to its claim, which is instead subject to s 34 of the Limitation Act 2010. Relevantly, s 34 provides that there is a two-year limitation period attaching to contribution claims, but that this does not begin until the Council is found liable to BNZ. If s 34 (or its predecessor) applies the Council's claim against Beca is in time.

Lower courts

The High Court dismissed Beca's strike-out application, determining that the Council's claim for contribution was not covered by the s 393(2) longstop, but rather that s 34 of the Limitation Act 2010 applied. Therefore, the High Court found the Council's claim was in time.

The Court of Appeal dismissed Beca's appeal, upholding the decision of the High Court.

The present appeal

The Supreme Court granted leave to appeal the decision of the Court of Appeal. The approved question was whether the Court of Appeal was right to conclude that the Building Act longstop provisions do not apply to a contribution claim.

Supreme Court decision

The Supreme Court dismissed Beca's appeal by a majority. Accordingly, the Council's claim against Beca was in time.

Majority reasons

The majority, comprising Ellen France, Williams and Kós JJ, noting that this appeal involved a contest between two strongly-worded statutory exceptions, considered the key issue was whether the ordinary words of s 393(2) mean that section was intended to override the long-established rights relating to contribution claims as reflected in s 34 of the Limitation Act 2010 (or its predecessor), or whether the sections could be reconciled.

While accepting that the wording of 393(2) — specifically, "civil proceedings relating to building work" — was broad enough to capture contribution claims, the majority determined that if s 393(2) was intended to override the special regime which existed for contribution claims, the legislation needed to expressly make that clear. As it did not do so, the majority found that the limitation period governing contribution claims in relation to building work was s 34 of the Limitation Act 2010 or, as applicable, that Act's predecessor. In reaching this conclusion, the majority relied on, among other matters, the unique features of contribution claims; domestic case law and that from comparable jurisdictions; the legislative history of the treatment of contribution claims; relevant reports of the Law Commission | Te Aka Matua o te Ture (Law Commission); and the unfairness that would arise under the interpretation advanced by Beca.

The majority considered that this interpretation was consistent with the statutory purposes of both the Building Act 2004 (to provide certainty and finality in building claims and to prevent individuals from remaining liable for an unlimited period of time) and the Limitation Act 2010 (to remedy injustices otherwise faced by joint tortfeasors). It was possible, in the majority's view, to give effect to both purposes.

The Court was unanimous that the Court of Appeal was correct to conclude that the distinction made in the High Court between ancillary and original claims should not be adopted, on the basis that s 4 of the Limitation Act 2010 exhaustively provides what constitutes an ancillary claim.

Dissenting reasons

Glazebrook and O'Regan JJ would have allowed the appeal. The dissenting Judges interpreted "civil proceedings relating to building work" in s 393(2) as covering contribution claims relating to building work. If contribution claims were to be excluded, this needed to be stated explicitly. In support of this interpretation, the minority relied on, among other matters, the clarity of the wording of s 393(2); the statutory history; the resulting practical difficulties (including in other parts of the Building Act 2004); and the conclusion that the unique features of contribution claims had no decisive bearing on the interpretative question. Glazebrook and O'Regan JJ also disagreed with the majority's conclusions regarding the relevance of the Law Commission reports. In terms of the policy objectives of the Building Act 2004 and Limitation Act 2010, the Judges determined these two distinct objectives could not be reconciled.

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