Supreme Court of New Zealand
Te Kōti Mana Nui

6 DECEMBER 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

PRATTLEY ENTERPRISES LTD v VERO INSURANCE NEW ZEALAND LTD

(SC 32/2016) [2016] NZSC 158

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.

Prattley Enterprises Ltd (Prattley) owns land on Worcester Street, just to the east of Cathedral Square, Christchurch. Prior to the Christchurch earthquakes of 2010 and 2011, a three storied building known as Worcester Towers occupied the site. The building was insured with Vero, with a sum insured of $1,605,000. Worcester Towers suffered moderate damage in the earthquake of 4 September 2010 and further damage in the Boxing Day earthquake of the same year. In the major earthquake of 22 February 2011 the building was severely damaged. It was eventually demolished in September 2011.

Prattley claimed on its insurance policy with Vero. Valuations of Worcester Towers were obtained. After brief negotiations, Prattley and Vero agreed that Vero would pay Prattley $1,050,000 plus GST in "full and final settlement" of its insurance claim. This figure represented an assessment of the pre-earthquake market value of the building.

In the present proceedings Prattley challenges the settlement. Prattley claims that both it and Vero entered the settlement under a common mistake as to the correct measure of indemnity under the policy and that the agreement should accordingly be set aside under the Contractual Mistakes Act 1977. It also seeks judgment for the difference between what it was paid and its claimed entitlement.

Prattley was unsuccessful in the High Court and Court of Appeal.

On appeal to the Supreme Court, Prattley argued the correct measure of indemnity was the total of the costs of repairing the damage to the building caused by the first two earthquakes and the costs of reinstatement following the third, such costs to be allowed for (a) cumulatively, save that in respect of each event, the sum insured of $1,605,000 operated as a cap; and (b) without allowance for betterment or depreciation. The total entitlement, on this basis, was $3,388,000 plus GST. Prattley therefore argued that the settlement, which proceeded on the basis that the measure of indemnity was the market value of the building, had been entered under a common mistake which had resulted in a substantially unequal exchange of value.

The Supreme Court has unanimously dismissed the appeal.

The Court rejected Prattley's arguments as to the extent of its entitlements. The policy was expressed in terms which are standard for indemnity policies. It contained a reinstatement cover option which Prattley had not accepted. It did not proceed on the basis that costs of repair or reinstatement were the primary measure of indemnity. Nor did it exclude the usual insurer entitlement to allowances for betterment or depreciation. As well, Prattley was not entitled to recover separately and cumulatively in respect of each event because (a) this would result in Prattley receiving more than it had lost; and (b) this would breach the indemnity principle. The evidence at trial was that the actual market value of the building was $520,000 and, on this basis, Prattley had been paid out approximately twice the amount of its actual loss.

The conclusions reached as to Prattley's entitlements under the policy meant that there was no need to engage closely with the arguments presented as to the Contractual Mistakes Act.

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