Supreme Court of New Zealand
Te Kōti Mana Nui

14 DECEMBER 2017

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SOUTHLAND INDOOR LEISURE CENTRE CHARITABLE TRUST v INVERCARGILL CITY COUNCIL

(SC 37/2017) [2017] NZSC 190

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

Background

In 1999–2000 the Southland Indoor Leisure Centre Charitable Trust (the Trust) had a stadium built in Invercargill to provide sporting and recreational facilities.

Problems with the roof trusses over the community courts were identified during construction. The Trust engaged an independent structural engineer, Mr Harris, to review the design. He provided advice as to how the problems with the trusses should be remedied. The Trust applied for a building consent for the remedial work. A letter from Mr Harris setting out how the work was to be done was attached to the application.

The Invercargill City Council (the Council) granted the building consent for the remedial work on the trusses. There would be no inspections of the remedial work by the Council. Instead, the building consent was issued subject to various conditions that the Trust's engineer was to meet. The conditions included written confirmation that the work was completed consistently with the key specifications set out in Mr Harris' letter and that individual truss measurements would be provided to the Council.

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The remedial work was undertaken in early 2000. The Council followed up on compliance with the conditions of the consent without success. An interim code compliance certificate for the building was nonetheless issued and the stadium opened in March 2000. The Council followed up again on the conditions so that a final code compliance certificate could be issued. However, before receiving this material, the Council issued a code compliance certificate for the remedial work. It was not disputed that this was negligent.

In January 2001 the Trust's engineer provided further information to the Council in relation to the conditions of the building consent. The information provided did not comply with those conditions. Notwithstanding, the Council issued a final code compliance certificate for the last stage of the construction in April 2003.

The remedial work on the trusses was not in fact completed consistently with Mr Harris' specifications and was defective.

The Trust sought further advice from Mr Harris in 2006 in relation to leaks in the roof over the community courts. The Trust was also prompted by reports of the collapse of a stadium in Poland under snowfall. Mr Harris confirmed that the strength of the trusses over the community courts, as designed, was adequate but set out a number of recommendations including that the truss welds and support fixings should be visually inspected and the precamber of the trusses measured. No inspection or measurements were undertaken.

As a result of the defective remedial work, the roof collapsed under snowfall in September 2010. The Trust subsequently brought proceedings against the Council in negligence and negligent misstatement in relation to the remedial work. The Trust was successful in the High Court. The Council appealed successfully to the Court of Appeal.

Leave to appeal to this Court was granted on the question of whether the Court of Appeal was correct to reverse the High Court judgment. The principal issue in this Court was whether the Court of Appeal was correct to distinguish this case from the decision in *Body Corporate No 207624 v North Shore City Council* (*Spencer on Byron*) on the question of whether the Council owed the Trust a duty of care.[1] That question also required consideration of whether the Court of Appeal was right to characterise the claim based on the code compliance certificate as a claim of negligent misstatement. The other principal issue arising on the appeal was whether the Trust's actions amounted to contributory negligence.

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1 *Body Corporate No 207624 v North Shore City Council* [2012] NZSC 83, [2013] 2 NZLR 297 [*Spencer on Byron*].

Reasons

This Court has allowed the appeal in part.

This Court has found unanimously that the Court of Appeal erred in distinguishing *Spencer on Byron* from the present case. The duty of care on councils under the Building Act 1991 springs from councils' regulatory role under that Act. The distinction which the Council sought to draw on the basis that the Trust was a commissioning owner of the building in this case was not consistent with the legislative scheme. Nor was the attempt to draw a distinction between the issuing of a code compliance certificate and councils' other functions such as granting building consents or carrying out inspections. These functions are all directed at ensuring that buildings comply with the relevant building code. As such, the Council owed the Trust a duty of care. In addition, the claim based on the code compliance certificate should have been characterised as one in negligence, not negligent misstatement.

This Court has found by majority (Elias CJ, O'Regan and Ellen France JJ) that the Trust was contributorily negligent with the result that the damages award was reduced by 50 per cent.

The majority has held that the Trust's failure to have the trusses and welds inspected and the precamber measured, as recommended by Mr Harris, amounted to contributory negligence. The minority (William Young and Glazebrook JJ) would have found that the Trust was not contributorily negligent on the basis that any safety concerns which the Trust had about the roof had been allayed by Mr Harris' report and therefore the non-implementation of the recommendations could not fairly be seen as contributory negligence.

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