

IN THE SUPREME COURT OF NEW ZEALAND

SC 78/2011
[2011] NZSC 98

BETWEEN P R DEVCICH & ORS AS TRUSTEES OF
THE PAUL DEVCICH FAMILY TRUST
AND J J DEVCICH & ORS AS
TRUSTEES OF THE JANICE DEVCICH
FAMILY TRUST
First Applicants

AND P R DEVCICH AND J J DEVCICH
Second Applicants

AND AMI INSURANCE LIMITED
Respondent

Court: Blanchard, Tipping and William Young JJ

Counsel: P J Dale for Applicants
G H Nation and J W A Johnson for Respondent

Judgment: 30 August 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2,500 to the respondent.

REASONS

[1] This civil appeal concerns whether a fire which destroyed the Devcich home in 2009 was arson committed by Mr Devcich (who did have a motive, although no prosecution eventuated) or arson committed by someone else (the only other suspect being one of the tenants of an adjacent house or both of those tenants acting together). Lang J considered that it was not established to the requisite standard of proof by AMI that Mr Devcich was responsible for the fire.¹ The Court of Appeal accepted the findings of fact made by the trial Judge, but considered that he had

¹ *Devcich v AMI Insurance Ltd* HC Auckland CIV-2009-404-5567.

imposed too high a standard of proof (virtually the criminal standard of beyond reasonable doubt), and drew inferences and a conclusion adverse to Mr Devcich.²

[2] On the proposed further appeal this Court would be asked to say whether the High Court or the Court of Appeal had properly assessed the burden of proof in accordance with *Z v Dental Complaints Assessment Committee*³ and then would be asked to engage in a second review of the factual material and to reach a different conclusion from that of the Court of Appeal.

[3] We consider that there is no question of general or public importance raised by the proposed appeal, nor do we have any concern about the approach taken in the Court of Appeal or the outcome in that Court. The principles are well settled. The appeal would involve only their application in the particular case, where it was open to the Court of Appeal to draw different inferences on the basis of the accepted findings of fact. The allegation made on behalf of Mr Devcich about the involvement of the neighbours is unconvincing. The evidence about the forced window is speculative. The timing issue assists Mr Devcich but does not exculpate him. Against this, the Court of Appeal was entitled to take the view that there was a very high level of suspicion arising from his purchase of petrol prior to the fire, supposedly for use in a hedge trimmer but in fact unnecessary for that purpose, and his implausible explanation of that purchase. His actions on the way to work and after arrival at work on the morning of the fire were also considered suspicious.

[4] We are not at all persuaded that the decision of the Court of Appeal may have given rise to a substantial miscarriage of justice. The criteria for leave are accordingly not met.

Solicitors:
Jones Fee, Auckland for Applicant
Wynn Williams & Co, Christchurch for Respondent

² *AMI Insurance Ltd v Devcich* [2011] NZCA 266 per Glazebrook, Allan and Simon France JJ.

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.