**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 69/2011**
**[2011] NZSC 112**

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| BETWEEN | SOVEREIGN ASSURANCE COMPANY LIMITED<br>Applicant |
| AND | DOUGLAS NORMAN SCOTT<br>Respondent |

Court: Elias CJ, Blanchard and William Young JJ

Counsel: J G Miles QC and B J Burt for Applicant
H Rennie QC and P W Michalik for Respondent

Judgment: 22 September 2011

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal is dismissed.**

**B The applicant is to pay the respondent costs in the sum of $2,500.**

**REASONS**

[1] The underlying case involves a claim by Mr Douglas Scott against Sovereign Assurance Co Ltd which was filed in the District Court in September 2006. Mr Scott claims that as a result of a stroke in January 1997, he now suffers from significant permanent neurological sequelae thus entitling him to benefits under the policy in issue in the proceedings. Sovereign denies that there have been such sequelae associated with the stroke but, in the alternative, asserts that the claim is barred by the Limitation Act 1950. Its primary limitation argument, under s 4(1) of that Act, proceeds on the basis that if the assertions of Mr Scott and the opinions of his doctors are correct – and Sovereign's primary position has been that they are not – the neurological sequelae of which he complains were present and permanent from

the outset (or at least from before September 2000). There is also a separate limitation argument based on s 4(7) of the Limitation Act.

[2] In the District Court, Sovereign unsuccessfully applied to strike out Mr Scott's claim[1] but Allan J allowed an appeal against that decision and thus struck out the claim.[2] The Court of Appeal, having granted leave to appeal, later allowed the appeal by Mr Scott and thus reinstated the claim.[3] Sovereign now seeks leave to appeal to this Court against the Court of Appeal judgment.

[3] The s 4(7) argument is completely misconceived and we see no point in discussing it.

[4] The other aspect of the case raises something of a conundrum. Where symptoms do not resolve and thus can in the end recognised as permanent, from what point were they permanent? Sovereign's argument is that that because the symptoms complained of did not resolve, they must have been permanent from the start.

[5] Whether Sovereign's argument is legally right is distinctly arguable. We are, however, not persuaded that this argument can necessarily be completely addressed in the proposed appeal. This is because the case may also turn in part on unexplored factual issues. For instance there may be a need for medical evidence as to the physiological mechanisms involved in the initial damage caused by the stroke and the usual healing/repair processes and, particularly, why the recovery predicted by Sovereign's medical advisor in June 1999 did not occur.[4]

[6] The application for leave to appeal is within s 13(4) of the Supreme Court Act 2003. To grant leave to appeal, we must therefore be satisfied that it is necessary in the interests of justice for this Court to hear and determine the proposed

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1 *Scott v Sovereign Assurance Co Ltd* DC Taupo CIV-2006-069-285, 21 November 2008.
2 *Sovereign Assurance Co Ltd v Scott* HC Rotorua CIV-2008-463-909, 30 September 2009.
3 *Scott v Sovereign Assurance Co Ltd* [2011] NZCA 214, (2011) 16 ANZ Insurance Cases 61-890.
4 See *Scott v Sovereign Assurance Co Ltd* [2011] NZCA 214, (2011) 16 ANZ Insurance Cases 61-890 at [31]–[33].

appeal *before the proceeding concerned is concluded.* As we are not so satisfied, the application must be dismissed.

Solicitors:
Chapman Tripp, Auckland, for Applicant
Chris Cargill, Taupo for Respondent