

IN THE SUPREME COURT OF NEW ZEALAND

SC 84/2011  
[2011] NZSC 100

BETWEEN	RAEWYN MARIE SCOTT Applicant
AND	LINDY JANE ELLISON Respondent

Court: Elias CJ, Blanchard and William Young JJ

Counsel: G Brittain for Applicant  
J S McHerron for Respondent

Judgment: 31 August 2011

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JUDGMENT OF THE COURT

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

REASONS

[1] The respondent, Ms Ellison, has brought a proceeding against the applicant, Ms Scott, seeking damages for breach of a vendor's warranty under an agreement for sale and purchase of land. The applicant was successful in the District Court in obtaining defendant's summary judgment.<sup>1</sup> The High Court set aside the summary judgment.<sup>2</sup> The Court of Appeal agreed with the High Court and dismissed Ms Scott's appeal.<sup>3</sup>

[2] The issue on the proposed appeal to this Court is whether a warranty which applies where "the vendor has done or caused or permitted to be done" certain building works (alleged to have been done without a building permit or a code

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<sup>1</sup> *Ellison v Scott* [2010] DCR 404.

<sup>2</sup> *Ellison v Scott* HC Tauranga CIV-2009-470-1153, 19 August 2010.

<sup>3</sup> *Scott v Ellison* [2011] NZCA 302.

compliance certificate) can apply where they were done when Ms Scott was an owner of the land but the sale to Ms Ellison took place after Ms Scott had transferred the property to a trust of which she was one of the two trustees. She and her co-trustee were the vendors in the sale to Ms Ellison.

[3] We do not consider that it is reasonably arguable that the High Court and the Court of Appeal were in error in the view they took. There is no provision in the contract expressly or by implication limiting the warranty to acts done after both vendors became co-owners (which in this case would limit it to works done by or on behalf of the trust). In simple terms, Ms Scott was an owner when the works were done and remained so until the warranty was given by her as a vendor. That suffices to make her answerable under the warranty if the works did not comply in any of the respects set out in the warranty clause.

Solicitors:  
Chris Rejthar & Associates, Tauranga for Applicant  
Burley Attwood Law, Tauranga for Respondent