

IN THE SUPREME COURT OF NEW ZEALAND

SC 83/2013
[2013] NZSC 132

BETWEEN THE GREAT CHRISTCHURCH
BUILDINGS TRUST
Applicant

AND CHURCH PROPERTY TRUSTEES
First Respondent

CHIEF EXECUTIVE OFFICER OF THE
CANTERBURY EARTHQUAKE
RECOVERY AUTHORITY
Second Respondent

Court: McGrath, Glazebrook and Arnold JJ

Counsel: F M R Cooke QC and A V Foote for Applicant
J V Ormsby and J W A Johnson for First Respondent
G Gardner and A A Jacobs for Second Respondent

Judgment: 2 December 2013

JUDGMENT OF THE COURT

- A. The application for leave to appeal is dismissed.**
- B. The applicant is to pay costs of \$2,500 to the first respondent.**
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REASONS

[1] The Great Christchurch Buildings Trust seeks leave to appeal from the judgment of the Court of Appeal upholding the lawfulness of decisions by the Church Property Trustees (the Trustees) in relation to the Christchurch Cathedral.¹ The decisions were taken following the damage caused to the Cathedral by the

¹ *Great Christchurch Buildings Trust v Church Property Trustees* [2013] NZCA 331, [2013] 3 NZLR 597.

February 2011 earthquake and the subsequent earthquakes in June and December of that year. On 1 March 2012 the Trustees decided to deconstruct the Cathedral, after receiving notice from the Canterbury Earthquake Recovery Authority requiring works be undertaken to make the building safe. The applicant brought judicial review proceedings and was successful in establishing that, if the Trustees demolished the existing Cathedral, they were obliged to build a new Cathedral on the existing site. The applicant, however, did not succeed on its main argument that the Trustees were obliged to reinstate the existing Cathedral.² The Court of Appeal dismissed an appeal brought by the applicant against the High Court's judgment.³

[2] At the time they took their decision the Trustees had been advised that it would be possible to undertake works that retained in place most of the walls of the Cathedral, each of which had a degree of offset above sill level which is 2 to 3 metres above the ground. The walls would be held in place with the insertion of interior steel shoring systems. Another option, deconstruction, involved bringing the building down to sill level. The applicant favoured the former but the Trustees decided to implement the latter of those two options.

[3] The judgments of the Courts of Appeal and High Court generally turn on the terms of the trusts on which the Cathedral and its surrounding land are held by the Trustees. The trusts are set out partly in legislation, and partly in the terms of the instruments, including Provincial Council Ordinances, relating to land set aside for building the Cathedral. The applicant says that trusts also arise from public subscriptions advanced for the building project.

[4] In this context the applicant wishes to bring an appeal to this Court to address issues said to arise from alleged errors in the judgment of the Court of Appeal as follows:

- (a) Whether the public donation of funds for the Cathedral created obligations on the Trustees which have continuing force. The Court

² *Great Christchurch Buildings Trust v Church Property Trustees* [2012] NZHC 3045, [2013] 2 NZLR 230.

³ *Great Christchurch Buildings Trust v Church Property Trustees*, above n 1.

of Appeal decided that the trusts arising from these donations had been spent on completion of the construction of the Cathedral.

- (b) Whether the obligations of the Cathedral trusts permit the Trustees to demolish or deconstruct the Cathedral, creating a new cathedral on the site. This is said to turn on whether the original trust expressed to be in relation to “a” Cathedral became a trust in relation to “the” particular Cathedral that was built.
- (c) Whether the Trustees have an obligation to maintain and sustain the continuing existence of the present Christchurch Cathedral, and to repair the damage to the structure so that it can continue to function as the Cathedral.
- (d) Whether the Trustees had power to demolish and deconstruct the Cathedral in face of the terms of the Anglican (Diocese of Christchurch) Church Property Trust Act 2003 (the Church Property Trust Act) and preceding legislation.

[5] This Court must not give leave to appeal unless it is satisfied that it is in the interests of justice to do so. It is in the interests of justice to give leave where the proposed appeal raises a matter of general or public importance.⁴ In the context of the Supreme Court Act 2003, what is generally required for an appeal to this Court is that the issues to be brought before the Court, rather than the underlying circumstances giving rise to the application for leave to appeal, are of general or public importance.

[6] The first three issues the applicant wishes to have argued, which are set out in [4](a), (b) and (c) above, substantially involve the interpretation, in particular circumstances, of documents and Ordinances in relation to the Cathedral, rather than general legislative provisions of the Church Property Trust Act. In particular, that is the case in respect of the central question of whether, once the original building was

⁴ Supreme Court Act 2003, s 13(2)(a).

completed, the trust that was in relation to a building became a trust in relation to the particular building.

[7] We do not consider that cases cited to us carry the issues in this litigation into an area of general legal principle. The Court of Appeal's decision that the terms of the Cathedral trusts only require the existence of "a" Cathedral is a decision on the meaning of particular instruments rather than on general principles. Likewise decisions in relation to the obligation to repair and maintain the Cathedral and whether it can give rise to an obligation to maintain the particular Cathedral in its present form involve particular issues of interpretation rather than legal issues.

[8] The fourth proposed issue concerns the Court of Appeal's decision that the Trustees had no obligation under the Church Property Trust Act to maintain "that" Cathedral. The Court did, however, recognise that the Trustees had an obligation to maintain and repair "a" Cathedral and affirmed the High Court's judgment that deconstruction could only take place if the Trustees were to build, in place of the damaged building, a new Cathedral. We are satisfied that in the circumstances of this case no arguable legal question arises from this point.

[9] We are accordingly satisfied that no legal question of general or public importance arises from the application for leave to appeal. But it may also be in the interests of justice to grant leave to appeal where the underlying circumstances are, or the outcome of the appeal is, of public importance and real doubts have been raised as to whether the decisions of the courts below are correct. We acknowledge that the circumstances giving rise to the application for leave to appeal are of course of great general importance to the citizens of Christchurch. That importance arises from the history, function and iconic nature of the Cathedral. However, in this case nothing that has been raised on behalf of the applicant reaches the threshold of showing that the decisions of the courts below may be in error.

[10] Accordingly leave to appeal is declined.

Solicitors:
Duncan Cotterill, Christchurch for Applicant
Wynn Williams, Christchurch for First Respondent
Crown Law Office, Wellington for Second Respondent