Supreme Court of New Zealand
Te Kōti Mana Nui

15 October 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

FIRM PI 1 LIMITED v ZURICH AUSTRALIAN INSURANCE LIMITED T/A ZURICH NEW ZEALAND

(SC 141/2013) [2014] NZSC 147

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

The Salisbury Park Apartments, located in Christchurch, were a two-building complex comprising of 68 unit titled apartments. The Body Corporate had insured the complex with the first respondent, Zurich Australian Insurance Ltd (Zurich). The insurance contract had been arranged on the Body Corporate's behalf by the appellant, an insurance broker, and included cover against natural disaster damage.

The apartments were severely damaged by the Christchurch earthquake of February 2011. One building had to be demolished and the Body Corporate took the view that the other was a constructive total loss. The buildings were insured for a total of $12.95m under the insurance contract, that being the reinstatement value estimated by an approved firm of valuers. Unfortunately, it turned out that the actual reinstatement cost is $25m.

As residences, the apartments in the complex were also covered against natural disaster damage under the Earthquake Commission Act 1993 (the EQC Act). The Earthquake Commission (the EQC) has paid the Body Corporate the

maximum statutory cover of $100,000 for each of the 68 residences, a total of $6.8m.

The question in this case is whether Zurich is liable to pay the full amount of the reinstatement value as stated in the contact, that is, $12.95m, or whether it is liable to pay only the difference between the $6.8m that the EQC has paid and the reinstatement value of $12.95m, that being $6.15m. This question turns primarily on the interpretation of the natural disaster damage clause in the insurance contract.

The parties submitted the question whether the sum insured under the insurance contract is inclusive or exclusive of all amounts payable to the Body Corporate by the EQC for natural disaster damage for determination as a preliminary issue by the High Court. The High Court found in favour of the Body Corporate. Zurich then appealed, and the Court of Appeal allowed its appeal.

The Supreme Court granted leave to appeal on the question whether the sum insured for buildings under the insurance contract was inclusive or exclusive of the amount payable to the Body Corporate by the EQC under the EQC Act.

The Supreme Court has dismissed the appeal by a majority comprising of McGrath, Glazebrook and Arnold JJ.

The majority has agreed with the Court of Appeal that the language of the natural disaster damage clause, read in the context of the contract as a whole, limits Zurich's liability on a total loss from natural disaster to the difference between the sum payable by the EQC and the limit of liability as identified in the insurance contract.

The majority has held that the insurance broker sought, and Zurich offered, natural disaster cover for the difference between the cover provided by the EQC and the sum insured under the contract. The majority is satisfied that Zurich did not offer and the insurance broker did not seek cover in excess of the reinstatement estimate provided by the firm of valuers, given the reinstatement estimate's role as the sum insured and limit of liability under the contract. This is reflected in the premium calculation, which was set out in a schedule that was specifically incorporated as part of the insurance contract. That schedule clearly identifies the natural disaster cover that the premium was intended to

purchase. Accordingly, the risk of underinsurance lay with the Body Corporate in this as in other contexts. Further, the majority has found that anomalies which were claimed to arise from this interpretation of the contract resulted from the fact that the buildings were under-insured, and not from the Court's interpretation. Accordingly, there is no commercial absurdity of a type that would justify a different approach to the meaning of the contract.

The Chief Justice and William Young J have dissented.

In accordance with the views of the majority, the appeal has been dismissed.

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