IN THE SUPREME COURT OF NEW ZEALAND

SC 72/2016
[2016] NZSC 126

BETWEEN	AUCKLAND COUNCIL First Applicant
	JAMES HARDIE NEW ZEALAND Second Applicant
AND	WEATHERTIGHT HOMES TRIBUNAL First Respondent
	THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Second Respondent
	BODY CORPORATE 19500 Third Respondent
	GEFEI LIANG & OTHERS Fourth Respondents

Court:	Glazebrook, Arnold and O'Regan JJ
Counsel:	A R Galbraith QC for First and Second Applicants No appearance for First Respondent K G Stephen and M J R Conway for Second Respondent T J Rainey for Third and Fourth Respondents
Judgment:	16 September 2016

JUDGMENT OF THE COURT

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

B **Costs of $2,500 are payable by the applicants to the second respondent.**

C **Costs of $2,500 are payable by the applicants to the third and fourth respondents.**

REASONS

Background

[1] The Weathertight Homes Resolution Services Act 2006 replaced the Weathertight Homes Resolution Services Act 2002. At issue in this application is s 141 of the 2006 Act, which provides:

> **141 New claim in respect of same dwellinghouse, etc, in multi-unit complex**
>
> (1) The claim may, if it relates to a dwellinghouse, common areas, or both, in a multi-unit complex, be withdrawn, at the claimant's discretion and without complying with section 67, for the purpose only of enabling the claimant, as soon as is practicable, to be part of, or to join, a new claim brought in respect of the dwellinghouse, common areas, or both under section 19, 20, or 21.
>
> (2) If the claimant is part of, or joins, a new claim of the kind referred to in subsection (1), Part 1 applies to the new claim.
>
> (3) Subsection (2) is subject to subsections (4) and (5).
>
> (4) If, within 1 year after the claim is withdrawn to enable a new claim of the kind referred to in subsection (1) to be brought, a claim of that kind is brought, section 37 applies to the new claim as if it were brought when the claim was brought.
>
> (5) Subsection (4) applies whether the claim concerned was withdrawn before, on, or after the transition date.
>
> (6) This section overrides section 135, and does not limit the application to the claim of section 67.

[2] Section 37 of the 2006 Act provides:

> **37 Application of Limitation Act 2010 to applications for assessor's report, etc**
>
> (1) For the purposes of the Limitation Act 2010 (and any other enactment that imposes a limitation period), the making of an application under section 32(1) has effect as if it were the filing of proceedings in a court.
>
> (2) This section is subject to sections 54, 133, 141, 146, 152, and 155.

[3] The application relates to an 18 unit residential complex. Three of the unit-holders brought claims under the 2002 Act within the 10 year longstop period.[1] After the 2006 Act came into force two of the three 2002 claimants withdrew their individual 2002 claims to join a new multi-unit complex claim made by the Body Corporate. This claim was out of time under the longstop provision but was made within a year of the 2002 Act claims – see s 141(4) of the 2006 Act.

[4] The issue is who gets the benefit of the old claim: whether all the claimants in the new claim get the benefit of the old claim or only the two 2002 claimants. The Chief Executive (the second respondent) decided that s 141 applied to all of the new claimants, as did the Weathertight Homes Tribunal,[2] the High Court[3] and the Court of Appeal.[4]

Our assessment

[5] The provisions at issue relate to a limited class. The applicants assert that they nevertheless concern a large number of potential claimants. The submissions of the second respondent may provide some support for that view. By contrast, the third and fourth respondents assert that the provisions are transitional ones applying to a small category of claims.

[6] It is unsatisfactory that no attempt has been made by any of the parties to quantify the possible claimants. It is not possible therefore for us to assess whether or not the application raises issues of general or commercial significance.

[7] Even assuming there is an issue of general public importance, we do not consider it in the interests of justice for there to be a further appeal. Nothing put forward by the applicants suggests any real likelihood that this Court would come to a view that differs from that of the Chief Executive, the Tribunal or the courts below. We accept the submission of the respondents that, in these circumstances, the delay and cost of a further appeal is not justifiable. This is particularly the case in light of

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1 A number of the other unit-holders had brought claims under the 2002 Act but by 2012 all but three had been withdrawn.

2 *Auckland Council v Weathertight Homes Tribunal* [2015] NZHC 2098 (Keane J) at [22]–[26].

3 At [42]–[45].

4 *Auckland Council v Weathertight Homes Tribunal* [2016] NZCA 256 (Ellen France P, Stevens and Winkelmann JJ) at [46] and [54]–[55].

one of the purposes of the 2006 Act: "to provide owners of dwelling houses that are leaky buildings with access to speedy, flexible, and cost-effective procedures for the assessment and resolution of claims".[5]

Result

[8] The application for leave to appeal is dismissed.

[9] Costs of $2,500 are payable by the applicants to the second respondent. Costs of $2,500 are payable by the applicants to the third and fourth respondents.

Solicitors:
Minter Ellison Rudd Watts, Auckland for First Applicant
Chapman Tripp, Wellington for Second Applicant
Crown Law Office, Wellington for the Second Respondent
Rainey Law, Auckland for Third and Fourth Respondents

[5] Section 3(a) of the Weathertight Homes Resolution Services Act 2006.