IN THE SUPREME COURT OF NEW ZEALAND

SC 68/2016
[2016] NZSC 98

BETWEEN	OLIVIA WAIYEE LEE Applicant
AND	WHANGAREI DISTRICT COUNCIL Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: Applicant in person
F P Divich for Respondent

Judgment: 3 August 2016

JUDGMENT OF THE COURT

A The application for leave to appeal is granted in part (*Olivia Waiyee Lee v Whangarei District Council* [2016] NZCA 258).

B The approved question is whether, in terms of s 37 of the Weathertight Homes Resolution Services Act 2006, the application for an assessor's report, "stopped the clock" for limitation purposes with regard to the proceedings against the respondent.

C In all other respects the application is dismissed.

REASONS

Background

[1] Ms Lee seeks leave to appeal against the decision of the Court of Appeal[1] dismissing her appeal against summary judgment granted in the favour of the respondent in the High Court.[2]

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1 *Lee v Whangarei District Council* [2016] NZCA 258 (Winkelmann, Simon France and Woolford JJ) [*Lee* (CA)].

2 *Lee v Whangarei District Council* [2015] NZHC 2777 (Associate Judge Bell) (*Lee* (HC)].

[2] The proceeding concerns Ms Lee's house. During construction, Ms Lee had noticed that the house leaked and drew this to the builder's attention. In February 2008 Ms Lee engaged an expert consultant, Mr Beattie, to assess the home. This was in an attempt to resolve an ongoing dispute with the builder over workmanship and payment.

[3] The Beattie report, amongst other faults, identified that the exterior cladding "would not meet the requirements of the New Zealand Building Code in either durability, weathertightness or alignment." A later report in April 2008 repeated this finding, in addition to noting defects in roof draining and balconies.[3] In April 2011, another report was prepared by Mr Gill, a registered building surveyor, who identified defects that had not previously been identified, including that the plywood pre-cladding had not been sealed and joints had not been taped.

[4] The Whangarei District Council had carried out a number of inspections during construction of the house. It failed its final inspection on 26 March 2008 and a code compliance certificate was not issued. Ms Lee issued proceedings on 21 May 2014 alleging negligence in the Council's inspections.

Judgments in the courts below

[5] Associate Judge Bell was satisfied that the proceedings were governed by s 4(1)(a) of the Limitation Act 1950 and not by s 393 of the Building Act 2004.[4] He held that the Council had shown "by a strong margin" that Ms Lee had discovered the damage to her house prior to 21 May 2008, Ms Lee knew it had defects that went to the weathertightness of the house and that the house did not comply with the Building Code. Associate Judge Bell granted summary judgement to the Council accordingly.[5]

[6] The Court of Appeal dismissed Ms Lee's appeal. The Court found that the Associate Judge did not err in identifying the relevant limitation period as s 4(1)(a)

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3 These facts are taken from *Lee* (HC), above n 2, at [15]–[36] and [46].
4 At [13].
5 At [70]–[71].

of the Act.[6] Nor did it accept that the relevant defect was the plywood cladding as identified in 2011 by Mr Gill, rather than the defects identified by Mr Beattie.[7]

[7] The Court of Appeal also did not accept Ms Lee's submission that s 37 of the Weathertight Homes Resolution Services Act "stops the clock" not only for the purposes of that Act but also for the purposes of all proceedings relating to the building.[8]

Analysis

[8] Apart from the issue of the effect of s 37 of the Weathertight Homes Resolution Services Act,[9] the proposed appeal does not meet the criteria for leave to appeal under s 13 of the Supreme Court Act 2003. The other issues Ms Lee seeks to raise are concerned with her own particular circumstances and raise no issues of general or public importance. Nothing raised by Ms Lee suggests the incorrect limitation period was used or that the lower courts were wrong to take the Beattie report as the starting point for limitation purposes.

[9] Ms Lee did seek to argue points not raised in the courts below. There is nothing in these new arguments that would suggest the decisions below may have been in error. Nor does anything she seeks to raise[10] point to a possible miscarriage of justice.[11]

Result

[10] The application for leave to appeal is granted in part.

[11] The approved question is whether, in terms of s 37 of the Weathertight Homes Resolution Services Act 2006, the application for an assessor's report,

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6 *Lee* (CA), above n 1, at [28]–[32].
7 At [44].
8 At [50]–[53].
9 This issue was left open by this Court in *Osborne v Auckland Council* [2014] NZSC 67, [2014] 1 NZLR 766 at [14]–[15].
10 This includes the issue as to "hearsay" discussed in the Court of Appeal: see *Lee* (CA), above n 1, at [45]–[47].
11 See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, [2006] 3 NZLR 522 at [4]–[5] for the application of that ground in civil cases.

"stopped the clock" for limitation purposes with regard to the proceedings against the respondent.

[12] In all other respects the application is dismissed.

Solicitors:
Heaney & Partners, Auckland for Respondent