IN THE SUPREME COURT OF NEW ZEALAND

SC 128/2017
[2018] NZSC 11

BETWEEN	STEVEN PHILIP MASON AND KATHARINE MARY MASON Applicants
AND	ANDREW HAMILTON MAGEE AND SHARON LEE MAGEE Respondents

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	D J S Parker and J T Wollerman for Applicants M Freeman for Respondents
Judgment:	9 February 2018

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants are to pay the respondents costs of $2,500.

REASONS

Introduction

[1] The applicants, Steven Mason and Katharine Mason, bought a home from the respondents, Andrew Magee and Sharon Magee. The Masons subsequently found the home was not weathertight. They brought a claim for damages in the High Court based on what they said were pre-contractual misrepresentations by the Magees about the home's weathertightness. Williams J found in favour of the Masons.[1] The Magees

1 *Mason v Magee* [2017] NZHC 51.

successfully appealed to the Court of Appeal.[2] The Masons now seek leave to appeal to this Court.

Background

[2] The background is set out in full in the Court of Appeal judgment.[3] For present purposes, we need only note that the Masons' claim was based on two representations. Both of the relevant statements were made by Mrs Magee about two months before the parties entered into an agreement for sale and purchase of the property. The context of both representations was informal. The first statement was made at a dinner party in late October 2011 in response to a question from the Magees' neighbour. The second statement was made the next day when the Masons visited the Magees' home.[4]

[3] On both occasions, Mrs Magee responded "No" when asked whether the home was leaky. On the second occasion, Mrs Mason's evidence was that Mrs Magee told her that the house was not leaky and that they had "never had any issues with" the house.

[4] The other factual matter we should note is that the Masons obtained a building report on the property prior to the contract with the Magees becoming unconditional. The agreement for sale and purchase between the parties was conditional on the Masons obtaining a building report satisfactory to them. They duly obtained a report which identified some minor matters. As the Court of Appeal noted:[5]

> The evidence was that Mrs Mason found the [building] report equivocal and pressed [the report writer] on whether the property was a leaky home. He replied "no". She stated that he had been very confident about the house, saying it required only a brief inspection, and she had trusted him. In response to questions from the Court, Mr Mason accepted that the [building] report was the way in which the Masons meant to confirm for themselves that there were no weathertightness issues.

[5] The High Court Judge found that the representations were not fraudulent but innocent. Despite the informality of the context in which they were made, Williams J

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2 *Magee v Mason* [2017] NZCA 502 (Miller, Courtney and Gendall JJ) [*Magee* (CA)].
3 At [7]–[20].
4 At that time, the Masons had a conditional contract to buy another home but had expressed interest in the Magees' property.
5 *Magee* (CA) above n 2, at [44].

concluded that they did induce the Masons to enter into the contract and the inducement was reasonable in the circumstances. The Judge awarded damages to the Masons on the basis of loss of value. The resulting award, of over $500,000, was reduced by $68,000 to reflect the Masons settlement with the company responsible for the preparation of the building report.

[6] The Court of Appeal (Miller J delivering the judgment of Miller and Gendall JJ) took a different view of the meaning of Mrs Magee's statements than that taken by Williams J. In essence, the Court of Appeal concluded that Mrs Magee's statements meant only that the Magees had not experienced weathertightness problems and that they had no reason to believe the house suffered defects that would cause problems.[6] The Court said that the evidence confirmed that this was how Mrs Mason understood the statements. On this basis, there was no misrepresentation because the statement did not convey any meaning that was false. In addition, although it was not necessary to do so, the Court found that the building report did not preclude reliance on Mrs Magee's representations.

[7] Courtney J, dissenting, took a different view of the meaning of the representations. In particular, the Judge did not consider Mrs Magee's statement at the house was answered from personal experience.

Discussion

[8] We do not consider that the proposed appeal raises any question of general or public importance or of general commercial significance.[7]

[9] On the proposed appeal the Masons wish to argue that the majority in the Court of Appeal erred in its approach to the interpretation of pre-contractual representations and that the meaning adopted by Courtney J is correct. However, as is apparent from the description of the judgments set out above, the case turned on a factual assessment

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6 The Court of Appeal noted that Mrs Magee's statement could have three meanings: "first, that the house had not leaked while the Magees owned it (meaning 1); secondly that Mrs Magee knew of no facts establishing that it was through design or construction prone to leak (meaning 2); and thirdly, that it was not through design or construction leaking or prone to leak (meaning 3)": at [29].

7 Senior Courts Act 2016, s 74(2); and see Supreme Court Act 2003, s 13(2).

as to the meaning of the representations. No questions of general or public importance arise.

[10] The applicants also seek to challenge the potential meanings ascribed by Miller J to the representations. Again, the approach adopted in this respect gives rise to no more general question. Rather, it was simply a framework for the factual assessment of the meaning of the representations. Nor does anything raised by the applicants' submissions give rise to an appearance of a miscarriage, particularly given the context and the possible impact of the building report.[8]

[11] Accordingly, the application for leave to appeal is dismissed. The applicants must pay the respondents costs of $2,500.

Solicitors:
Parker & Associates, Wellington for Applicants
Thomas Dewar Sziranyi Letts, Lower Hutt for Respondents

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8 In the sense required in civil cases: see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, [2006] 3 NZLR 522 at [5].