IN THE SUPREME COURT OF NEW ZEALAND

SC 134/2017
[2018] NZSC 19

BETWEEN	MANCHESTER SECURITIES LIMITED Applicant
AND	BODY CORPORATE 172108 Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: M C Harris and H E McQueen for Applicant
T J G Allan and S F Powrie for Respondent

Judgment: 14 March 2018

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Costs of $2,500 are awarded to the respondent.

REASONS

[1] This application for leave to appeal concerns a leaky high-rise apartment complex. Almost all of the top floor (level 12) is a penthouse privately owned by Manchester Securities Ltd (Manchester) with the remaining areas, such as the stairwell and lift, being common property.

[2] In 2009 the Body Corporate applied to the High Court, under s 48 of the Unit Titles Act 1972, to sanction a scheme for integrated repairs to all levels of the building, including level 12. This was necessary because otherwise the Body Corporate could only carry out repairs to common property. Manchester opposed the scheme.

[3] The application was eventually successful,[1] the order sanctioning the scheme being sealed on 13 April 2011. Under the scheme Manchester's liability was capped at 11.88 per cent of the total cost of repairs to levels 1-11 less the cost of repairs to level 12 to reflect their unit entitlement.[2]

[4] The work, however, took longer and was more expensive than contemplated at the time of the scheme. This meant that, instead of Manchester making a contribution to the common property repairs, the owners would be contributing to Manchester's repairs.

[5] The Body Corporate applied to vary the scheme. Manchester opposed the application.

[6] The High Court amended the scheme, lifting the cap of 11.88 per cent and reinstating the unit title statutory scheme.[3] A provisional sum was ordered to be paid to the Body Corporate by Manchester to be adjusted on completion of remediation.[4] The Court of Appeal dismissed Manchester's appeal.[5]

[7] Manchester argues that the following issues of general and public importance arise:

(a) The jurisdiction for varying (as against settling) a scheme.

(b) Whether a court can vary a scheme by effectively starting again. It is argued in this case that it should have been varied only to the extent of costs relating to Manchester's "dilatory remediation".

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1 *Body Corporate 172108 v Meader (No 2)* HC Auckland CIV 2009-404-6868, 19 August 2010 (Heath J).

2 *Body Corporate 172108 v Meader & Ors* HC Auckland CIV 2009-404-6868, 3 March 2010 at [48]-[50] per Heath J; *Body Corporate 172108 v Meader*, above n 1, at [36] per Heath J.

3 *Body Corporate 172108 v Manchester Securities Ltd* [2017] NZHC 329 at [155]-[157] per Fogarty J

4 At [157] per Fogarty J.

5 *Manchester Securities Ltd v Body Corporate 172108* [2017] NZCA 527 (French, Cooper and Brown JJ).

(c) The relationship between the power to vary a scheme and the arbitration clause. Manchester argues that the proper approach was to quantify the additional remediation costs under the arbitration clause.

[8] The Body Corporate submits that these are largely factual issues or depend on factual issues. We accept that submission.

[9] Whether or not it was appropriate to vary the scheme depended on an assessment of all the particular circumstances of this case. It follows that no issue of general or public importance arises. Nor does the material put forward by Manchester suggest any risk of a miscarriage of justice.[6]

Result

[10] The application for leave to appeal is dismissed. Costs of $2,500 are awarded to the respondent.

Solicitors:
Gilbert/Walker, Auckland, for Applicant
Grove Darlow & Partners, Auckland, for Respondent

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6 *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].