IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 43/2019
[2019] NZSC 85

BETWEEN	RIDGWAY EMPIRE LIMITED Applicant
AND	JILL GRANT Respondent

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	N R Campbell QC and D W Grove for Applicant G P Blanchard QC and E E Hill for Respondent
Judgment:	8 August 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay the respondent costs of $2,500.

REASONS

Introduction

[1] The applicant, Ridgway Empire Ltd (Ridgway) sold a residential unit in Auckland (unit 4) to the respondent, Jill Grant, in 2009. It subsequently transpired that unit 4 was not weathertight. Ms Grant successfully brought a claim for damages in the High Court on the basis of pre-contractual misrepresentation about the unit's weathertightness.[1] Ridgway's appeal from that decision was dismissed by the Court of Appeal.[2] Ridgway now seeks leave to appeal to this Court.

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1 *Grant v Ridgway Empire Ltd* [2018] NZHC 2642 (Palmer J) [HC judgment].
2 *Ridgway Empire Ltd v Grant* [2019] NZCA 134 (Gilbert, Wylie and Thomas JJ) [CA judgment].

Background

[2] Unit 4 is one of five connected units built in the 1970s. Ridgway had owned unit 4 since December 2003 and Ridgway's director, Aaron Ridgway, occupied the unit until October 2007.[3] Mr Ridgway had made alterations to unit 4 in early 2004 in the course of which some leaks from the third-floor deck were discovered.[4]

[3] Mr Ridgway marketed unit 4 himself. It was common ground in the Court of Appeal that:[5]

> (a) before entering into the sale and purchase agreement, Ms Grant asked Mr Ridgway whether the unit leaked and whether it was a leaky building;
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> (b) Mr Ridgway replied to the effect "no, the unit does not leak and it is not a leaky building"; and
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> (c) although Mr Ridgway did not know it at the time, the unit was in fact leaking and it was a leaky building. Because of latent defects, the unit had been leaking for some time causing extensive damage that was not discovered until mid-2011.

[4] In the High Court, Palmer J found the statement made by Mr Ridgway that there was no issue as to weathertightness was an unqualified statement of fact which was false.[6] Palmer J also found the representation was intended to induce her to enter into the agreement for sale and purchase and she reasonably relied on it in doing so.[7] Damages of $474,101 were awarded comprising the costs of repair and $25,000 general damages for stress and anxiety.

[5] The Court of Appeal upheld this decision.[8]

The proposed appeal

[6] The proposed appeal would revisit the findings of the Court of Appeal that the statements made by Mr Ridgway were unqualified statements of present fact, not

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3 At that point he moved into the adjoining townhouse, unit 5.
4 The wood was wet, but not rotten, and was replaced. No building consent was obtained for this work.
5 CA judgment, above n 2, at [2].
6 HC judgment, above n 1, at [37]–[38].
7 At [39].
8 CA judgment, above n 2, at [18], [22] and [25].

opinion, and that Ms Grant reasonably relied on those statements in entering into the agreement for sale and purchase of unit 4.

[7] In particular, the applicant wishes to argue that:

(a) the Court did not apply the correct test in determining the meaning of pre-contractual statements but rather has added a gloss which is both incorrect and unhelpful;

(b) the Court was not correct to hold that the statements were an unqualified statement of present fact where the facts relied on were "unremarkable";

(c) in determining reliance was reasonable the Court effectively applied a presumption of reasonable reliance where the representor has superior knowledge; and

(d) the Court incorrectly imposed a duty to disclose which is of uncertain extent.

Assessment

[8] We do not consider the Court's assessment of these matters raises any question of general or public importance or of general commercial significance.[9] Rather, the case turned on the Court's view of the facts.

The meaning conveyed

[9] The Court said that determining the meaning of pre-contractual statements, requires an enquiry into "what a reasonable person would have understood from those words in all the circumstances".[10] The Court noted that the nature and subject-matter

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9 Senior Courts Act 2016, s 74(2).

10 CA judgment, above n 2, at [11], citing *IFE Fund SA v Goldman Sachs International* [2006] EWHC 2887 (Comm), [2007] 1 Lloyd's Rep 264 at [50].

of the transaction; the respective knowledge of the parties; their relative positions; and the words used would all be relevant considerations.[11]

[10] No issue is taken with that statement of the principles. Rather, the applicant would challenge the observation which followed that:[12]

> Where a party with superior knowledge takes it upon itself to make a representation of fact without qualifying it by reference to the basis for its assertion, it will generally have to accept the consequences of being wrong. However, each case will ultimately turn on its own facts.

[11] There is authority for the Court's observation[13] but, in any event, on the face of it, it is apparent there is no suggestion the observation will apply in all cases. And the Court goes on to recognise explicitly the factual nature of the inquiry it was undertaking.

[12] In reaching the view the Judge was not wrong to find Mr Ridgway's statement was "an actionable representation of present fact", the Court relied on a number of factual features, including the following:[14]

(a) Mr Ridgway had marketed and sold unit 4 himself;

(b) his statements about weathertightness were expressed as statements of present fact (for example, "it is not a leaky building") and were unqualified;

(c) it was not put to Ms Grant in cross-examination that she knew he could not vouch as to the correctness of what he said; and

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11 At [11], citing *Bisset v Wilkinson* [1927] AC 177 (PC) at 183.

12 At [11] (footnote omitted).

13 The applicant is critical of the Court's reliance on *Re Reese Silver Mining Co* (1867) LR 2 Ch App 604 (CA) [*Smith's Case*]. That case provides some support for the principle that superior knowledge is relevant but there is, in any event, support for the proposition in *Smith v Land and House Property Corp* (1884) 28 ChD 7 (CA) at 15; and see also *Wilkinson v Bisset*, above n 11, at 183.

14 CA judgment, above n 2, at [18].

(d) Mr Ridgway had superior knowledge of unit 4 given the length of time he had owned it. He had also renovated it and owned and lived in the adjoining unit for a period.

[13] The Court also said that even if the parties should have been taken to understand the inquiry was merely as to Mr Ridgway's knowledge of weathertightness issues, Mr Ridgway could not overcome his lack of disclosure of "all material facts".[15] The Court stated Mr Ridgway did not tell Ms Grant:[16]

> … that the unit had suffered serious leaks in the past leading to significant water ingress to the timber framing behind the walls and in the ceiling in the second-floor lounge, the very area in which leaks were later found by Ms Grant and which the experts agreed had persisted for an extended period, pre-dating her purchase. On the contrary, Mr Ridgway provided her with the safe and sanitary report, which did not refer to these leaks, …

[14] The applicant wishes to argue the finding in this respect is an inroad into the principles of caveat emptor on the quality of a property for sale. In the circumstances, that is simply a challenge to the Court's assessment of the facts.

Reasonable reliance

[15] As to the finding it was reasonable for Ms Grant to rely on Mr Ridgway's statement, the Court was influenced by the "clear and unequivocal" nature of the response and Mr Ridgway's superior knowledge about the unit.[17] Again, the Court emphasised this was a factual question, but noted:[18]

> Where it is obvious the vendor is not in a position to know the absolute correctness of a statement made, then, even if the statement is expressed as an unqualified statement of fact, it may be proper to interpret it as no more than a statement of opinion based on facts known or reasonably expected to be known to him or her. Liability in this context should not turn on whether a layperson vendor is sufficiently astute to qualify an oral statement about weathertightness by carefully limiting it to a statement of their knowledge. The circumstances may make that obvious. Further, it may not be reasonable for the representee to rely on such a statement, expressed orally by a layperson in answer to a question, as an unqualified statement of absolute fact. However, to escape liability in such a case, the representor would need to disclose all material facts known to them bearing on the issue.

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15 At [19].
16 At [19].
17 At [22].
18 At [23].

[16] As the respondent submits, Mr Ridgway's superior knowledge was one amongst a number of factors considered by the Court. The Court was emphasising superior knowledge as a reason that Ms Grant might seek to rely on the statements made by Mr Ridgway.

[17] Finally, on the question of disclosure, the Court said no more than that, against the particular factual background, the non-disclosure was material. We add that nothing raised by the applicant's submissions gives rise to an appearance of a miscarriage, particularly given the combination of facts identified by the Court of Appeal.[19]

Result

[18] Accordingly, the application for leave to appeal is dismissed. The applicant may pay the respondent costs of $2,500.

Solicitors:
Foy & Halse, Auckland for Applicant

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