



**Supreme Court of New Zealand
Te Kōti Mana Nui**

29 July 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

CARTER HOLT HARVEY LTD v MINISTER OF EDUCATION & ORS

(SC 93/2015) [2016] NZSC 95

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz.

The appellant, Carter Holt Harvey Limited (CHH), manufactures cladding sheets and cladding systems that have been installed in schools throughout New Zealand that are owned or administered by one or more of the respondents. The cladding sheet product is known as “Shadowclad”. The respondents say that a large number of school buildings have been affected by weathertightness issues and allege that these problems have arisen because the cladding sheets and cladding systems supplied by CHH are defective. The respondents brought five causes of action against CHH, including claims in negligence, negligent failure to warn and negligent misstatement.

CHH applied to the High Court for an order striking out a number of the causes of action. Asher J in the High Court declined the application, ruling that all claims should go to trial. CHH appealed to the Court of Appeal. The appeal failed, except in relation to the negligent misstatement claim which was struck out.

CHH applied for leave to appeal to this Court. The respondents applied to cross-appeal in relation to the decision to strike out the negligent misstatement claim. This Court granted leave to appeal and cross-appeal on the grounds of whether the Court of Appeal was correct to conclude that the claims in negligence are arguable; that the claims in negligent misstatement are not arguable; and that the longstop limitation

provision in s 393 of the Building Act 2004 does not apply to the respondents' claims against CHH.

In relation to the negligence claim, CHH argued that the claim could not succeed as there was no arguable duty of care owed by CHH to the respondents, and that to hold otherwise would cut across the contractual arrangements between the various parties to the construction of the school buildings. The respondents argued that it was at least arguable that the relationship between the parties was such that CHH owed them a duty of care.

In relation to the negligent misstatement claim, CHH argued that the respondents had not pleaded the required special relationship between CHH and them such that CHH assumed responsibility to them to take reasonable care concerning the truth of its statements about the cladding sheets and cladding systems. The respondents argued that CHH could reasonably expect that purchasers of the cladding products would rely on CHH's promotional material.

In relation to s 393 of the Building Act, CHH argued that the proceedings related to "building work" under the provision and therefore the 10-year limitation period in the Act prevented the respondents from bringing a large number of their claims. The respondents argued that the Act draws a distinction between building work and the manufacturing of building products and materials, and that, as the claim against CHH related to the latter, the limitation provision did not apply.

The Court has unanimously dismissed the appeal and allowed the cross-appeal. In relation to the claims in negligence and negligent misstatement, the Court has found that the claims are arguable and require consideration in light of proper factual findings. They should therefore be allowed to proceed to trial rather than be struck out. In relation to s 393 of the Building Act, the Court has found that the provision does not apply to claims related to defective building products and materials, which are not claims related to "building work" for the purposes of the provision. As a result, the s 393 period does not apply to the respondents' claims against CHH.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921