



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

22 December 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

OLIVIA WAIYEE LEE v WHANGAREI DISTRICT COUNCIL

(SC 68/2016) [2016] NZSC 173

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.

Ms Lee’s home, built in 2007 and early 2008, was not weathertight. On 12 August 2008 Ms Lee applied for an assessor’s report under s 32(1) of the Weathertight Homes Resolution Services Act 2006 (the WHRS Act). In October 2008 it was confirmed that the house suffered numerous weathertightness defects and that it met the eligibility requirements under the WHRS Act for a claim to be brought. Whangarei District Council, in its capacity as building surveyor and territorial authority, was identified as a potentially liable party.

Since 2008, Ms Lee has been involved in a number of proceedings against the Council, the builder and the cladding installer who worked on her home. On 10 March 2010 Ms Lee sought adjudication under the WHRS Act by applying to the Weathertight Homes Tribunal naming several respondents, including the Council. In March 2013 Ms Lee’s claim was terminated on the basis of s 60(5) of the WHRS Act. This section provides that an owner cannot initiate or continue an adjudication to the extent that the subject matter of the claim is the subject of an arbitration that has already commenced, or of other proceedings initiated by the claimant or brought by way of counterclaim. The Tribunal held that the subject matter of Ms Lee’s claim in the Tribunal was the same as in the proceedings against the cladding company and was closely related to the subject matter of the proceedings against the builder and so terminated her claim.

On 21 May 2014, Ms Lee commenced this proceeding against the Council by filing a statement of claim in the High Court. The High Court was of the view that the proceedings were brought out of time and summary judgment was given in favour of the Council. This was on the basis of the Court's interpretation of s 37(1) of the WHRS Act, which provides that the filing of an application by the owner of a dwelling-house for an assessor's report has the same effect, for the purposes of the Limitation Act 1950, as filing proceedings in a court.

Ms Lee argued that the proceedings in the High Court are to be treated as having been "brought", for the purposes of s 4(1)(a) of the Limitation Act 1950, on 12 August 2008 when she applied for the assessor's report. Section 4(1)(a) provides that an action founded on tort "shall not be brought after the expiration of six years from the date on which the cause of action accrued".

The High Court rejected Ms Lee's argument on the application of s 37(1). This meant that the present proceeding had to have been filed within six years of the cause of action accruing. The High Court held that Ms Lee's cause of action accrued before 21 May 2008, so she was out of time. The Court of Appeal upheld the High Court's decision.

The Supreme Court granted leave to appeal on the question whether, pursuant to s 37(1) of the WHRS Act, the application for an assessor's report "stopped the clock" for limitation purposes in respect of the present proceeding.

Ms Lee maintained her argument that, because she filed an application for an assessor's report before the expiry of the limitation period, s 37(1) means that the present proceeding was also issued within time. The Council submitted that s 37(1) only applies to claims under the WHRS Act and not to any other proceeding.

The Supreme Court has unanimously allowed Ms Lee's appeal.

The Court has found that the purpose of s 37(1), in light of its text, scheme and legislative history, is to "stop the clock" on limitation while the dwelling is assessed, allowing homeowners to make informed decisions about their options. To interpret s 37(1) more narrowly risks those with leaky homes falling into procedural traps where their legal claims become time-barred while they are pursuing remedies under the WHRS Act. This would not accord with the WHRS Act's purpose of providing leaky home owners access to speedy, flexible and cost effective procedures for both the assessment and resolution of claims. Had s 37(1) been limited to proceedings under the WHRS Act, it would have said so in clear language, particularly as the WHRS Act is intended to provide a scheme to benefit consumers. Concerns of inconsistency within the WHRS Act as a result of this interpretation and open-ended liability are unfounded.

The Court has concluded that the clock was stopped for limitation purposes when Ms Lee applied for an assessor's report and her court proceedings were therefore not statute barred. Accordingly, the order for summary judgment must be set aside.

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