IN THE SUPREME COURT OF NEW ZEALAND

SC 107/2014
[2014] NZSC 186

BETWEEN	CERTAIN UNDERWRITERS AT LLOYDS OF LONDON First Applicant
	SIRIUS INTERNATIONAL INSURANCE GROUP LIMITED Second Applicant
AND	CRYSTAL IMPORTS LIMITED Respondent

Court:	McGrath, Glazebrook and O'Regan JJ
Counsel:	B D Gray QC for Applicants Z G Kennedy and I Rosic for Respondent
Judgment:	16 December 2014

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay the respondent costs of $2,500 and reasonable disbursements (to be fixed if necessary by the Registrar).

REASONS

[1] The applicants seek leave to appeal against certain aspects of a decision of the Court of Appeal,[1] which substantially upheld a High Court decision answering

[1] *QBE Insurance (International) Ltd v Wild South Holdings Ltd* [2014] NZCA 447. The judgment dealt with three appeals from High Court decisions. QBE filed an application for leave to appeal to this Court, but later abandoned it. The third insurer involved in the Court of Appeal proceeding, Vero Insurance New Zealand Ltd, did not seek leave to appeal to this Court.

two questions relating to the interpretation of an insurance policy issued by the applicants.[2]

[2] The applicants seek to challenge both of the answers given or upheld by the Court of Appeal. The questions arose in the context of litigation about five buildings in Christchurch that were owned by the respondent and insured by the applicants. The buildings were damaged in the September 2010 earthquake in that city and damaged again in the February 2011 earthquake. Before the February 2011 earthquake, the applicants had made some payments in relation to claims for the damage caused by the September 2010 earthquake.

[3] The first question concerned the extent of the applicants' liability to indemnify the respondent for the separate damage caused to the respondent's properties by the September earthquake. This focused on the automatic reinstatement of sum insured clause (RSI clause) in the policy. The relevant part of the RSI clause provided that after a loss for which a claim is payable, "the amount of insurance cancelled by loss will be automatically reinstated from the date of loss" unless either party gives written notice to the contrary. The Court of Appeal found that this meant that the cover required to meet a given loss reinstates immediately following the happening of the insured event that caused it, also triggering a liability of the insured to pay an additional premium. Either party may by notice cancel reinstatement, but any notice operates prospectively.[3]

[4] The applicants wish to argue that the effect of the RSI clause is that cover reinstates only from the date on which payment is made by the insurer for the loss, rather than from the date of the event which caused the loss, as the Court of Appeal found. They identify various undesirable consequences that arise if that interpretation is not adopted and suggest there is a tension between the Court of Appeal decision in this case and this Court's decision in *Ridgecrest NZ Ltd v IAG New Zealand Ltd*.[4]

---

2 *Crystal Imports Ltd v Certain Underwriters at Lloyds of London* [2013] NZHC 3513.
3 *QBE Insurance (International) Ltd v Wild South Holdings Ltd*, above n 1, at [55].
4 *Ridgecrest NZ Ltd v IAG New Zealand Ltd* [2014] NZSC 129.

[5] The second question related to the average clause in the policy. It related to only one of the five buildings. It focused on the basis of valuation of the insured property for the purpose of the application of the average clause to the claim made for loss resulting from earthquake damage to the building. The High Court found that the value will reflect the basis of recovery elected by the insured (reinstatement value or indemnity value).[5] The Court of Appeal agreed.[6] The appellants say they wish to argue in this Court that the policy does not contemplate variable values depending on the basis on which the insured elects to claim: the appropriate basis for the application of the average clause will always be reinstatement value.

[6] In relation to the RSI clause, the Court of Appeal's interpretation substantially upheld that of the High Court in the present case and in the other decisions under appeal to the Court of Appeal. It appears to be an orthodox reading of the RSI clause. We are not persuaded that any miscarriage of justice will arise if we do not hear the proposed appeal on this ground. The case involves the interpretation of particular policy wording. The applicants say this wording is relatively common in New Zealand but that is disputed. In any event, there is no point of principle arising and we do not see the case as one of general commercial significance. Nor do we accept that there is any conflict with *Ridgecrest*, given the substantially different wording of the policy in issue in that case.

[7] The position is even clearer in relation to the proposed point of appeal relating to the average clause. There is no apparent error in the concurrent findings of the High Court and Court of Appeal or the reasoning behind those findings. Again no matter of public importance or matter of general commercial significance arises: the case is limited to the application of orthodox principles of interpretation to the specific wording of the clause in the particular policy. There is no appearance of a miscarriage of justice.

---

5 *Crystal Imports Ltd v Certain Underwriters at Lloyds of London*, above n 2, at [142].
6 *QBE Insurance (International) Ltd v Wild South Holdings Ltd*, above n 1, at [130]–[133].

[8] We therefore decline leave to appeal and award costs of $2,500 and reasonable disbursements to the respondent.

Solicitors:
DLA Phillips Fox, Auckland for Appellants
Minter Ellison Rudd Watts, Auckland for Respondent