

IN THE SUPREME COURT OF NEW ZEALAND

SC 110/2014
[2014] NZSC 195

BETWEEN

DANIEL THOMAS SPENCER
RIDDIFORD
First Applicant

YVONNE ADA RIDDIFORD
Second Applicant

AND

THE ATTORNEY-GENERAL
Respondent

Court: Elias CJ, William Young and Glazebrook JJ

Counsel: C S Withnall QC for the Applicants
M T Parker and J S Andrew for the Respondent

Judgment: 22 December 2014

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

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

REASONS

Background

[1] In September 1991, the Riddifords obtained consent for a subdivision of an area of their land containing a farm cottage. As a condition of consent, they were required to set aside an esplanade reserve. The matter of compensation for the

esplanade reserve was referred to the Land Valuation Tribunal (the Tribunal) for determination under s 290 of the Local Government Act 1974 (now repealed).¹

[2] The Riddifords' claim was for some \$13.3 million of compensation. In 2005, the Tribunal awarded compensation of \$156,200.² Following that judgment, the Crown applied for an order for costs and the Riddifords applied for an order for the calculation and payment of interest.

[3] In response to those applications, the Tribunal awarded simple interest on the compensation award from the date of the deposit of the plan.³ The Tribunal also awarded costs against the Riddifords of \$100,000.⁴ That sum was deducted by the Crown from the compensation payable.

[4] The Riddifords' appeal to the High Court on the Tribunal's valuation and costs decisions was unsuccessful.⁵ The Riddifords applied for leave to appeal to the Court of Appeal and were granted leave on issues relating to the costs awards.

[5] The Court of Appeal held that the award of costs was made without jurisdiction and it was set aside.⁶ On 4 September 2014, an application to recall the Court of Appeal judgment was successful and the judgment was recalled solely for the purpose of awarding simple interest at Judicature Act 1908 rates on the sum of \$100,000 from 18 May 2007,⁷ being the date costs were awarded against the Riddifords by the Tribunal.

[6] In the Court of Appeal recall judgment, the Court said:⁸

¹ Sections 237E and 237F of the Resource Management Act 1991 now deal with the taking of esplanade reserves and compensation.

² *Riddiford v Attorney-General* LVT Wellington LVP 1/00, 9 December 2005.

³ See *Riddiford v Attorney-General* LVT Wellington LVP 1/00, 18 May 2007 at [2]–[12]. The Tribunal held that the power to award interest was conferred by s 37(1) of the Land Valuation Proceedings Act 1948.

⁴ See [13]–[31].

⁵ *Riddiford v Attorney-General* HC Wellington CIV-2006-485-833, 23 June 2008.

⁶ *Riddiford v Attorney-General* [2012] NZCA 112 (Arnold, Randerson and Stevens JJ).

⁷ *Riddiford v Attorney-General* [2014] NZCA 435 (Arnold, Randerson and Stevens JJ) at [5].

⁸ At [3].

In relation to the main issue of interest, we are not willing to accept the appellants' submission that interest should be awarded on a compound basis at bank rates. In the absence of any specific provision for compound interest and, in the light of the inability to award compound interest under s 87 of the Judicature Act, we are satisfied that the proper award is for simple interest. The submission that the relevant legislation was intended to allow "full compensation" does not cause us to alter our view.

[7] The Riddifords apply for leave to appeal against the Court of Appeal's decision in the recall judgment not to award compound interest on the sum of \$100,000.

Parties' submissions

[8] The Riddifords say that the Court of Appeal did not refer to r 54 of the Court of Appeal (Civil) Rules 2005 and it appeared to consider it was operating under s 87 of the Judicature Act. They also say that, in the modern context and in particular in the context of compensation for compulsory requisition of land, compound interest should have been awarded.

[9] The Crown says that the Court must have been operating under r 54. It accepts that this rule does not, unlike s 87, forbid the awarding of compound interest. However, the Crown argues it was appropriate for the Court of Appeal to use the interest rates applicable to the original award.

Discussion

[10] In its reasons the Court of Appeal indicated that its decision on interest was informed s 87 of the Judicature Act. It was not purporting to operate under that section. We accept the Crown's submission that the Court's decision was under r 54 of the Court of Appeal (Civil) Rules.

[11] It was open to the Court of Appeal, under r 54 to award simple interest.⁹

⁹ This is especially the case against the background of s 77 of the District Courts Act 1947 and r 11.27 of the High Court Rules. See also *AMI Insurance Ltd v Devich* [2011] NZCA 266, (2011) 16 ANZ Insurance Cases 61–895 at [110]; and *Deloitte Touche Tohmatsu Trustee Company Ltd v Christchurch Pavillion Partnership (No 1)* [2002] 3 NZLR 215 (CA) at [10]–[15].

[12] As to the contention that the Court of Appeal's decision was in the context of a land valuation claim, the interest awarded by the Tribunal on the compensation sum itself was simple interest. That decision was not the subject of appeal to the Court of Appeal, which was thus concerned only with interest on the costs award.

[13] No issue of principle arises and therefore no issue of general or public importance.

Result and costs

[14] The application for leave to appeal is dismissed.

[15] Costs of \$2,500 are awarded to the Respondent.

Solicitors:
Crown Law office, Wellington for the Respondent