IN THE SUPREME COURT OF NEW ZEALAND

SC 84/2014
[2014] NZSC 198

BETWEEN	THE WANAKA GYM LIMITED Applicant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

SC 85/2014

BETWEEN	FIONA CAROLINE GRAHAM Applicant
AND	QUEENSTOWN LAKES DISTRICT COUNCIL Respondent

Court:	Elias CJ, William Young and Arnold JJ
Counsel:	Applicant in SC 85/2014 in person R S Cunliffe for Respondent
Judgment:	23 December 2014

JUDGMENT OF THE COURT

The applications for leave to appeal are dismissed.

REASONS

[1] Dr Fiona Graham is the sole director and shareholder of Wanaka Gym Ltd which owns a property in Wanaka. On the property is a building which was constructed as a joinery factory and later became a commercial gym. There was a residential unit at the back of the building. Wanaka Gym subsequently converted the complex so as to provide additional accommodation. Disputes between the Queenstown Lakes District Council and the applicants go back to 2000 but the

prosecutions directly concern only events which occurred after 2005 (when a building consent was obtained for the conversion). In issue are convictions relating to the conversion and the use of the building involving:

(a) carrying out building work other than in accordance with a building consent (in relation to the creation of mezzanine living spaces and storage areas, non-compliant or incomplete fire exit ways, internal partitions walls without a 400mm gap between the top of the wall and the ceiling and installation of additional walls and doors);

(b) permitting the use or occupation of a building on or about 15 July 2008 when a dangerous building notice was in place;

(c) failing to comply with a notice to fix dated 18 July 2008 (failing to provide 400mm gaps);

(d) failing to comply with notice to fix (failing to provide proper egress);

(e) wilfully removing a dangerous building notice.

[2] For present purposes it is not necessary to distinguish between the charges which were laid against Wanaka Gym and those which Dr Graham faced. Convictions were entered in the District Court[1] and their appeals against conviction and sentence were dismissed by the High Court.[2]

[3] In relation to six of the charges there was an issue whether fire safety requirements which formed part of the 2005 building consent were properly imposed. The applicant's position is that the property (which, as we understand it, can accommodate up to 20 people) should have been treated as a single household unit for the purposes of fire safety requirements. The applicants' position is that the building consent application which was processed in 2005 incorporated fire

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1 *Queenstown Lakes District Council v Wanaka Gym Ltd* DC Queenstown CRN 08059500156-169, 19 April 2010 (liability decision) and *Queenstown Lakes District Council v Wanaka Gym Ltd* DC Queenstown CRN 08059500156, 10 January 2011 (sentencing decision).

2 *The Wanaka Gym Ltd v Queenstown Lakes District Council* [2012] NZHC 284.

requirements which were more onerous than were actually required and that Wanaka Gym had been forced by the Council to submit to them.

[4] The associated arguments were resolved against the applicants in the District Court. Following the District Court hearing but before the appeal, there was a determination by the Department of Building and Housing which concluded that the building was not a single household unit (as contended for by the applicants) but rather was properly categorised as a group dwelling.[3] The significance of this determination was assessed by French J who also took into account the background to the building consent application lodged by Wanaka Gym and the way in which that application addressed fire safety. She dismissed the appeals against conviction in respect of these charges as well as the other charges and also rejected the sentence appeal.

[5] Applications for leave to appeal to the Court of Appeal in relation to the six charges involving the fire safety issue we have discussed were dismissed by Lang J and the Court of Appeal.[4] The application to the Court of Appeal also encompassed a challenge to the sentences imposed in the District Court and upheld by French J.

[6] Dr Graham and Wanaka Gym now seek leave to appeal to this Court against the High Court judgment. At least as developed in submissions, this encompasses not only the dismissal of the appeals in relation to the six convictions just discussed but also the convictions on the other charges and perhaps the sentences imposed.

[7] The granting of leave to appeal against a High Court judgment is permissible only if there are exceptional circumstances, see s 14 of the Supreme Court Act 2003. Telling against the grant of leave in this case are the unsuccessful applications for leave to appeal to the Court of Appeal which was the subject of a full judgment by Lang J and a relatively full judgment by the Court of Appeal. The reality is that this case has now been addressed in four judgments and by three courts.

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3 *Regarding conditions to a building consent and the use of a building at 155 Tenby Street, Wanaka* Department of Building and Housing Determination 2011/69, 12 July 2011.

4 *The Wanaka Gym Ltd v Fiona Caroline Graham, v Queenstown Lakes District Council* [2012] NZHC 2662; and *The Wanaka Gym Ltd v Queenstown Lakes District Council* [2013] NZCA 397.

[8] The applicants rely on arguments as to whether some of the charges were laid out of time and what is now said to have been illegally obtained evidence. These arguments were not previously raised[5] and thus were not explored in evidence. For this reason they do not warrant a grant of leave to appeal. The issue as to the fire safety requirements has been fully reviewed in the judgments of the District Court, High Court and Court of Appeal. All other issues raised involve issues of fact or questions of assessment and degree which have been addressed as and when raised.

[9] Overall we are satisfied that this is a very particular case which involves no question of law of public or general importance. As well, we see no appearance of a miscarriage of justice.

Solicitors:
Macalister Todd Phillips, Queenstown for Respondent

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5 Dr Graham sees the references to what may or may not have been apparent to Council officers on or before June 2008 in the High Court judgment of French J at [30] – [31], as being referable to whether the prosecutions were commenced in time. In fact those paragraphs address a different point.