



Supreme Court of New Zealand

27 August 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

RIDGECREST NZ LIMITED v IAG NEW ZEALAND LIMITED (SC 76/2013)

[2014] NZSC 117

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 www.courtsofnz.govt.nz.

The appellant, Ridgecrest NZ Ltd, was the owner of a building in Christchurch which was insured with the respondent, IAG New Zealand Ltd. Under the insurance policy, Ridgecrest was insured for loss or damage to the building, as well as replacement cover for loss or damage that is restored or replaced. The policy also contained a maximum liability limit of \$1,984,000 for each “happening”. As this limit applied happening by happening, it reset after each such happening.

During the period of the policy, the building was affected by four earthquakes. As a result of either the third or fourth earthquake (“the final earthquake”), the building was damaged beyond repair.

IAG accepted that in respect of the final earthquake, it was liable to pay the maximum amount payable under the policy for any one happening, being \$1,984,000, but maintains that its liability in relation to the earlier earthquakes was limited to the cost of repairs actually undertaken. IAG had commissioned builders to repair the damage to the building caused by the first two earthquakes but these repairs were never completed.

Ridgecrest claims that it is entitled not only to \$1,984,000 in relation to the final earthquake but also for the damage to the building caused by the earlier earthquakes.

The parties sought a ruling from the High Court on a preliminary question as to whether Ridgecrest was entitled to be paid for the damage resulting from each happening up to the limit in each case. The High Court answered the preliminary question in favour of IAG and, on appeal, the Court of Appeal reached the same conclusion but on different grounds.

The appeal to this Court raised three questions for determination. First, whether the policy, construed in the context of the events that happened, required IAG to make payments in relation to the earlier earthquakes. Secondly, whether the losses resulting from the earlier earthquakes should be treated as merged or subsumed in the loss caused by the final earthquake, in accordance with, or by analogy with, the marine insurance principle that a partial and unrepaired loss merges with a subsequent total loss that occurs within the same insurance period. Thirdly, whether Ridgecrest's claim is precluded by the indemnity principle, under which insurance policies are construed to avoid an insured recovering more than the amount of the loss.

The Supreme Court has held that under the policy wording, Ridgecrest is entitled to be paid in respect of the damage caused by the earlier earthquakes (up to the policy limit of \$1,984,000 in respect of each earthquake) as well as \$1,984,000 in respect of the final earthquake. The Court has also held that the merger principle does not apply given that (a) in contradistinction to the position under marine insurance policies, the wording of IAG's policy provides for independent causes of actions in respect of the partial and unrepaired losses and the subsequent total loss, and (b) the application of the merger principle would be inconsistent with the insurance policy and in particular the resetting of the liability limit after each happening. The Court concluded that the indemnity principle was not engaged as the policy limit was not deemed to be the replacement value of the building. However, by reason of the indemnity principle, Ridgecrest is not entitled to recover more than the replacement value of the building and may not double count the losses.

The Court has unanimously allowed the appeal and, subject to the caveat that there is to be no double counting, answered the preliminary question in favour of the appellants.

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