Supreme Court of New Zealand

10 June 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

JOHN ANTHONY OSBORNE AND HELEN OSBORNE v AUCKLAND COUNCIL AND THE WEATHERTIGHT HOMES TRIBUNAL (SC 9/2013)

[2014] NZSC 67

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 appellants, John and Helen Osborne, purchased a newly built property on 26 April 1997. Construction work on the house had been substantially completed by 15 August 1996 and code compliance certificates were issued on 19 February and 18 April 1997. The house began to leak in late 1997 and repairs were subsequently carried out. These repairs were not effective.

The appellants applied for an assessor's report under the Weathertight Homes Resolution Services Act 2006 (WHRSA) on 14 February 2007. The report found that the house became habitable on or around 15 August 1996 and was therefore outside the eligibility criterion specified in s 14(a) of the WHRSA. Among other things, s 14(a) requires that the claim must relate to a house that was built within the period of ten years before the day the claim is brought.

On the basis of the report, the chief executive of the Ministry of Business, Innovation and Employment determined that the appellants' claim was not eligible. The appellants sought reconsideration of the chief executive's decision and the chair of the Weathertight Homes Tribunal found that the claim was eligible as to the work which was carried out after 13 February 1997 but was otherwise ineligible.

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Despite the chair's determination, the appellants made a claim in the Tribunal in which Auckland Council was named as a respondent. The Tribunal removed the Council as a respondent. The appellants appealed against the removal decision and sought judicial review of the chair's determination in the High Court. They were unsuccessful in both proceedings.

The Court of Appeal declined leave to appeal against the High Court's dismissal of the appeal in relation to the removal decision and also dismissed the appeal in relation to the judicial review proceedings. The Court of Appeal considered that a house should be regarded as built when completed to the extent required by the building consent and rejected the view that s 14(a) should be construed as a paraphrase of s 393 of the Building Act 2004.

The Supreme Court granted leave to appeal on the interpretation of s 14(a) of the WHRSA and on the effect of the dismissal of the appeal by the High Court against the removal order.

The Court has held that s 14(a), when construed in context and with regard to its purpose, should be interpreted as a paraphrase of s 393 of the Building Act. The word "built" in s 14(a) was intended to be construed by reference to the expression "building work" in s 393, which encompasses certifications. Section 14(a) therefore operates to exclude claims where all building work, including certifications where relevant, occurred more than ten years before an assessor's report is requested.

The Court has also held that the appellants' judicial review proceedings and in particular the subsequent appeals were not precluded by s 95(2) of the WHRSA and that there had been no abuse of process on their part.

The Court has also decided to release its judgment even though a conditional settlement was entered into between the parties after the hearing, as the case raised questions of public importance.

Accordingly, the appeal is allowed and the eligibility decision of the Tribunal chair set aside and replaced with a declaration that the claim is eligible.

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