IN THE SUPREME COURT OF NEW ZEALAND

SC 11/2015
[2015] NZSC 60

BETWEEN	WESTERN PARK VILLAGE LIMITED First Applicant
	DARRYLL LAWRENCE HEAVEN Second Applicant
	ANNE EVELYN HEAVEN Third Applicant
	TRUSTEE MANAGEMENT LIMITED Fourth Applicant
AND	SINAN ABED BAHO Respondent

Court:	Elias CJ, Glazebrook and O'Regan JJ
Counsel:	S E Fitzgerald and M F Mabbett for Applicants J E M Lethbridge for Respondent
Judgment:	14 May 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay the respondent costs of $2,500.

REASONS

[1] This application for leave to appeal relates to a single issue arising from the judgment of the Court of Appeal in this matter.[1]

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[1] *Western Park Village Ltd v Baho* [2014] NZCA 630 (Randerson, White and Courtney JJ) [Court of Appeal judgment].

[2] In its judgment, the Court of Appeal allowed an appeal from the High Court and upheld a claim made by the first applicant, Western Park Village Ltd (WPV) for breach of warranty under an agreement for sale and purchase of residential property. But the Court of Appeal also upheld a finding by the High Court[2] that WPV was liable to the respondent, Mr Baho, under a mortgage securing the unpaid portion of the purchase price for the property plus interest, and that the other applicants were liable as covenantors.

[3] The provision in the agreement for sale and purchase under which the unpaid portion of the purchase price was payable provided that WPV would execute a mortgage securing payment of "$US219,000.00 being the sum of $NZ300,000.00 at an exchange rate of $US0.73 … per $NZ1.00". It provided for payments of USD 91,250 on the first anniversary of the possession date under the agreement for sale and purchase and USD 127,750 on the second anniversary of the possession date. It provided for a penalty interest rate of 19 per cent per annum.

[4] WPV was in default of the latter payment: it had met its obligation in relation to earlier payments.

[5] The Court of Appeal accepted that the USD 127,750 should be converted to New Zealand dollars on the date of default in payment, namely 25 May 2009.[3] When penalty interest was added to the NZD amount, the total payable by WPV to Mr Baho was NZD 204,073.48. The Court found Mr Baho was liable to WPV for breach of warranty in the sum of NZD 50,000. Judgment was therefore entered for the sum of NZD 154,073.48 plus interest at 19 per cent per annum from 25 May 2009.

[6] On 25 May 2009, the USD:NZD exchange rate was USD 0.626 per NZD 1.00. This can be contrasted with the exchange rate at the date of the Court of Appeal judgment, which was approximately USD 0.77 per NZD NZ1.00.

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2 *Western Park Village Ltd v Baho* [2014] NZHC 198 (Heath J).

3 Court of Appeal judgment, above n 1, at [81].

[7] The point for which leave to appeal is sought relates to the date of conversion from USD to NZD. The applicants wish to argue that judgment should have been given in USD because that was the contractual sum. They say conversion to NZD should occur only upon execution of the judgment.

[8] The applicants say this is a point of general importance because if leave were granted, this Court could clarify the circumstances in which judgment on a claim in foreign currency should be given in the foreign currency. They also say a miscarriage of justice will occur if leave is not given because the outcome of the approach adopted in the High Court and upheld in the Court of Appeal has made their liability to Mr Baho about NZD 56,000 greater than it would be if their approach were adopted.

[9] The respondent points out that the provision in issue was a specific clause inserted into the standard form contract. Both the High Court and Court of Appeal determined the issue by applying the words of the provision. The point is therefore facts specific and not a point of general importance. He says there is no miscarriage of justice because, if the appellants were permitted to pay in USD, the respondent would not be put back in the position in which he would have been if no breach of the payment obligation had occurred.

[10] We accept the respondent's submission that the point that the applicants seek to raise is facts specific. It involves interpretation of an unusual contractual provision and the outcome is determined by applying that provision to the facts. We do not consider that any point of principle arises nor is there any appearance of a miscarriage of justice.

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

[12] We award costs of $2,500 to the respondent.

Solicitors:
Russell McVeagh, Auckland for Applicants
Grove Darlow & Partners, Auckland for Respondent