

IN THE SUPREME COURT OF NEW ZEALAND

SC 7/2017
[2017] NZSC 2

BETWEEN

HYUN SU PARK
Applicant

AND

JOONG SONG KWAK AND HYE SOOK
KWAK
First Respondents

ANDREW J STEELE AND
JARRED SCOTT
Second Respondents

TIM J RAINEY AND
JONATHAN WOOD
Third Respondents

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person

Judgment 9 February 2017

JUDGMENT OF THE COURT

A The application is dismissed for want of jurisdiction.

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

REASONS

Background

[1] On appeal from a decision of the Weathertight Homes Tribunal, the applicant, as a builder and developer of a leaky home, was held to be liable to the first respondents (the subsequent purchasers of the home).¹

¹ *Kwak v Park* [2016] NZHC 530 (Woolford J).

[2] Leave to appeal against the High Court decision was declined by that Court on 6 October 2016.² This was on the basis that there was no jurisdiction for a further appeal. As pointed out by Woolford J, the Court of Appeal in *Osborne v Auckland Council* was satisfied:³

...that the specific provisions of s 95(2)(b) of the [Weathertight Homes Resolution Services Act 2006 Act] prevail over and exclude both the application of the general right of appeal under s 66 of the Judicature Act [1908] and the right to apply for leave to appeal against a decision of the High Court conferred by s 67 of that Act.

[3] The applicant nevertheless tried to file an appeal in the Court of Appeal. The Registrar refused to accept this appeal for filing. That decision was upheld by Kós P.⁴ The applicant now applies to this Court for leave to appeal.

[4] We note that the parties named as second and third respondents acted as counsel for the first respondents at various stages of the proceedings. They were not parties to the proceedings and should not therefore have been named as respondents to this application.

Disposition

[5] This Court has no jurisdiction to entertain this application. The High Court judgment was final. It is therefore dismissed.

[6] The third respondents filed a memorandum explaining the background.⁵ It is thus appropriate to make an award of costs of \$2,500 in their favour.

Solicitors:
Martelli McKegg, Auckland for Second Respondents
Rainey Law, Auckland for Third Respondents

² *Kwak v Park* [2016] NZHC 2373.

³ *Osborne v Auckland City Council* [2012] NZCA 199, (2012) 21 PRNZ 76 at [58]. In this Court (*Osborne v Auckland Council* [2014] NZSC 67, [2014] 1 NZLR 766) it was said the correctness of the Court of Appeal's construction of s 95(2)(b) was not put in issue.

⁴ *Park v Kwak* [2016] NZCA 574.

⁵ The second respondents abide the decision of the Court.