

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 105/2019
[2020] NZSC 20

BETWEEN SOUTHERN RESPONSE EARTHQUAKE
SERVICES LIMITED
Appellant

AND BRENDAN MILES ROSS AND COLLEEN
ANNE ROSS
Respondents

Court: Winkelmann CJ, Glazebrook, O'Regan, Ellen France and
Williams JJ

Counsel: T C Weston QC and K M Paterson for Appellant
P G Skelton QC, K M Quinn and C B Pearce for Respondents
T C Stephens and M R G van Alphen Fyfe for New Zealand Law
Society as Intervener
K G Davenport QC and S E Wroe for New Zealand Bar
Association as Intervener
D M Salmon for LPF Group Limited as Intervener

Judgment: 16 March 2020

JUDGMENT OF THE COURT

- A The application for leave to intervene by LPF Group Ltd
is granted.**
- B No order as to costs.**
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REASONS

Introduction

[1] The Court is scheduled to hear an appeal by Southern Response Earthquake

Services Ltd (Southern Response) against the decision of the Court of Appeal in *Ross v Southern Response Earthquake Services Ltd*¹ on 23 and 24 March 2020.

[2] As this Court said in granting leave to appeal, “[t]he appeal will raise questions about the principles applicable to deciding whether representative claims proceed on an opt in or opt out basis.”² The Court of Appeal in allowing the appeal concluded that the representative claim advanced by Mr and Mrs Ross could proceed on an opt out basis. That meant, as the Court said, “they would bring the claim on behalf of every member of the group as defined, apart from any members who expressly chose to opt out of the proceeding”.³

[3] LPF Group Ltd (LPF), a litigation funder, has applied for leave to intervene in the hearing of the appeal. The application for intervention is opposed by the respondents, Mr and Mrs Ross. The appellant, Southern Response, abides the decision of the Court on the application.

The application for leave to intervene

[4] LPF advances its application on the basis that, given its position as a litigation funder, it will be able to assist the Court on the matters of general public importance raised by the appeal relating to access to justice for plaintiffs. In addition, or alternatively, LPF says it has a legitimate and substantive interest in the issues in the proceeding.⁴

[5] The grounds advanced by the respondents in opposing the application can be summarised in this way. First, it is submitted that LPF is not and does not purport to be a spokesperson for the litigation funding industry in New Zealand. It seeks rather to protect its “patch” and therefore its general interest in the appeal is an insufficient basis for granting leave.⁵ In developing the basis for opposition on this aspect, the respondents also say that allowing intervention by LPF may open the door to other

¹ *Ross v Southern Response Earthquake Services Ltd* [2019] NZCA 431 (Miller, Courtney and Goddard JJ) [CA judgment].

² *Southern Response Earthquake Services Ltd v Ross* [2019] NZSC 140 at [1].

³ CA judgment, above n 1, at [4].

⁴ Philip Newland, a director of LPF, in his first affidavit supporting the application, says LPF is New Zealand’s largest litigation funder.

⁵ Citing *Batato v United States of America* [2019] NZSC 50.

litigation funders seeking intervention which may effectively derail the Court from its task.⁶ Second, the respondents make the point that the parties are represented by senior counsel and have filed comprehensive submissions. There is no gap in the submissions on issues of principle and policy which LPF would help to meet. Finally, it is said that granting leave to intervene would cause unfair prejudice to the respondents, particularly given the late stage at which the application was made. It would also place time constraints on the hearing and result in additional cost.

Our assessment

[6] We consider that leave to intervene should be granted. The issues raised by the appeal will have implications beyond the instant case and we would be assisted in determining the appeal by the practical perspective LPF can provide.

[7] We acknowledge that LPF is not a representative body and that the Court will already have the benefit of a range of submissions on these issues.⁷ But the issues raised are still novel ones particularly in the New Zealand context and the law is in its early stages of development. In that context, LPF can provide some assistance.

[8] We accept also that the application is made late in the piece. But any prejudice from that delay to the respondents can be avoided by providing that the respondents may make further written submissions after the hearing if there are matters raised that they have not been able to deal with in the course of the hearing. In addition, as proposed by counsel for LPF, the submissions for LPF will be limited to 10 pages in length and any oral submissions from counsel will be brief.

Result

[9] Leave is granted to LPF, as an intervener, to file submissions of no more than 10 pages in length by 18 March 2020 and to appear at the hearing. The Court will

⁶ The point is made that the respondents' representative claim is funded by Claims Funding Australia (CFA) on an open class, opt out basis. The respondents say that CFA and LPF are accordingly competitors in the New Zealand litigation funding market.

⁷ At the invitation of the Court both the New Zealand Law Society and the New Zealand Bar Association sought and were granted leave to intervene.

decide in the course of the hearing whether it will hear, briefly, from counsel for LPF.
No costs will be payable to the intervener by any party.

[10] We make no order as to costs on the present application.

Solicitors:

Buddle Findlay, Christchurch for Appellant

GCA Lawyers, Christchurch for Respondents

Tompkins Wake, Auckland for LPF Group Ltd as Intervener