**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 83/2024**
**[2024] NZSC 148**

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| BETWEEN | ANTHONY JAMES REA AND JUDITH MARY REA AS TRUSTEES OF THE WAIATARUA TRUST<br>Applicants |
| AND | AUCKLAND COUNCIL<br>Respondent |

Court: Glazebrook, Kós and Miller JJ

Counsel: T J Rainey for Applicants
T C Weston KC, J R J Knight and E P V H Colenbrander for Respondent

Judgment: 6 November 2024

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal is dismissed.**

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

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**REASONS**

[1] In February 2014 the applicants, in their capacity as trustees of the Waiatarua Trust, purchased their home at 19 Te Atatu Road, Auckland. The house had been built between December 2012 and August 2013. Auckland Council issued a code compliance certificate (CCC) for the building on 18 October 2013.

[2] In August 2014, after discovering minor workmanship and aesthetic issues, the applicants approached Master Build Services Ltd (Master Build), which had issued a Master Build Guarantee in respect of the house when it was built, to arrange remedial

work. Repairs were carried out by the original builder between August 2014 and November 2015, but in late 2015 the builder ceased remedial work on the house.

[3] In February 2016, in response to a further enquiry from the applicants, Master Build commissioned a report on the house from Maynard Marks Ltd, a firm of building surveyors. That report (MM Report 1), issued in March 2016, identified 31 defects, with seven raising building code compliance issues. Two further reports were obtained by or on behalf of Master Build: a structural report issued by ACH Consulting Engineers on 24 May 2016 (ACH Report); and another report by Maynard Marks issued on 23 March 2017 (MM Report 2). In October 2018, the applicants engaged their own consultants, Fraser Thomas Ltd, to investigate and report on the defects identified in the MM Reports and the ACH Report. That final report (FT Report), issued on 19 March 2019, identified 19 defects—12 of which had already been identified in the earlier reports.

[4] On 9 September 2021 the applicants commenced proceedings in the High Court, alleging negligence by the Council in issuing the CCC. That claim was struck out on the basis it fell outside the six-year primary limitation period in s 11 of the Limitation Act 2010, and the three-year late knowledge period defined in s 14.[1] That decision was upheld by the Court of Appeal.[2]

[5] The applicants argued unsuccessfully that they obtained late knowledge for the purposes of ss 11 and 14 only on receipt of the FT Report on 19 March 2019. The High Court Judge considered they had sufficient knowledge by the date of the ACH Report, putting their claim out of time by more than two years.[3] The Court of Appeal put the late knowledge date at the date of the MM Report 2 at the latest, putting the applicants' claim at least 17 months out of time.[4]

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1 *Rea and Rea v 360 Degrees Ltd* [2022] NZHC 916 (Associate Judge Taylor) [HC judgment].
2 *Rea and Rea as trustees of the Waiatarua Trust v Auckland Council* [2024] NZCA 313 (Courtney, Katz and Wylie JJ) [CA judgment].
3 HC judgment, above n 1, at [66].
4 CA judgment, above n 2, at [69].

## Submissions

[6] The applicants' submissions regarding s 14(1) essentially reprise those advanced in the Court of Appeal. They submit the Court erred in its interpretation of paras (a), (b) and (c) of that subsection. They say the proposed appeal raises matters of general and public importance also amounting to matters of general commercial significance, especially as it concerns the first appellate-level decision regarding the interpretation of s 14.[5] The lower Courts' interpretation has the potential to statutorily bar meritorious claims in a broad range of cases, creating a risk of injustice.

## Our analysis

[7] As the Court of Appeal observed, there is a dearth of authority on the interpretation of s 14(1) of the Limitation Act.[6] To that extent, the proposed appeal raises a matter of general and public importance, also having commercial significance.[7]

[8] Despite that, however, we do not consider it necessary in the interests of justice for this Court to hear and determine the proposed appeal.[8] That is because even if the applicants' submissions as to the interpretation of s 14(1) were accepted, that provision includes, if earlier, "the date on which the *claimant ought reasonably to have gained knowledge*".[9] By 24 May 2016, the applicants had received two reports identifying a range of defects, including structural issues. They knew the Council had issued a CCC in respect of the house. For their current claim to be in time, it would have to have taken them more than two years and three months after that date to figure out that the Council was potentially liable, a proposition untenable on the facts presented.[10] It follows that we see the proposed appeal as futile and an inappropriate case for this Court to consider the issues raised in the application.

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5 See Senior Courts Act 2016, s 74(2)(a) and (c).
6 CA judgment, above n 2, at [24].
7 Senior Courts Act, s 74(2)(a) and (c).
8 Section 74(1).
9 Emphasis added.
10 The fact that the MM Report 1 and the ACH Report did not specifically mention fault by the Council does not alter that conclusion.

**Result**

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

[10] The applicants must pay the respondent costs of $2,500.

Solicitors:
Grant & Co, Auckland for Applicants