Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

30 October 2023

MEDIA RELEASE

YOUNG v ATTORNEY-GENERAL

(SC 98/2022) [2023] NZSC 142

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 Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

What this judgment is about

This judgment concerns the extent to which a landowner can be held liable in an action for private nuisance for a naturally occurring hazard that arises on that owner's land and harms, or poses risks to, their neighbour's property. A "private nuisance" is an unreasonable interference with someone's right to use or enjoy their land.

Background

In this case, the issue arises in the following way. Mr Young owns land lying beneath cliffs which were damaged by the 2010/2011 Canterbury earthquakes. The cliffs sit across the boundaries between Mr Young's land and the clifftop properties above. The earthquakes damaged the cliffs leading to rockfall on Mr Young's land. After the earthquakes, the cliffs remain unstable, and at risk of further collapse onto Mr Young's property. The neighbouring clifftop properties were treated as within the red zone under the Canterbury Earthquake Recovery Act 2011. The Crown acquired these properties between 2012 and 2015.

The ongoing instability of the cliffs means Mr Young's land is unsafe. His property was also red zoned and the Crown made a series of red zone offers to buy his property. The offers were rejected and Mr Young instead brought proceedings against the Crown in nuisance.

Lower Courts

The High Court dismissed Mr Young's claim. The Court considered the rockfall risk was an actionable nuisance and that accordingly there was what was described as a "measured" duty on the Crown to do what was reasonable to prevent or minimise that risk. The High Court found that the Crown's red zone offer meant that the Crown had done all it needed to do to meet that duty. Consequently, there was no obligation to compensate Mr Young fully for his loss.

Mr Young unsuccessfully appealed to the Court of Appeal. The Crown did not cross-appeal in the Court of Appeal from the finding of the High Court that there was an actionable nuisance, and the parties agreed that the duty was a "measured" duty to do what was reasonable. The Court of Appeal agreed with the High Court that the red zone offer met the measured duty on the Crown.

The appeal

On 14 December 2022, this Court granted Mr Young leave to appeal on the question of whether the Court of Appeal was correct.

Mr Young argued that the Court of Appeal was wrong to confirm the finding of the High Court that the red zone offer met the measured duty of care. He says that this Court should make an award of damages of $2 million, reflecting broadly half of the value of the property he lost because of the instability of the Crown land. Alternatively, he seeks an award of damages of just over $1.2 million. He says there are options for remediating the property which would enable him to remain on and use some of his land.

Supreme Court decision

The Supreme Court has unanimously dismissed Mr Young's appeal.

In reaching its decision, the Court noted that a landowner can be liable in private nuisance for harm originating in some natural condition of the land (here, the instability of the cliffs) where the landowner knows or ought to have known of it, but did not take reasonable steps to prevent it. What is "reasonable" requires a factual assessment and the duty on the landowner is a "measured" one, signalling an obligation which is both tailored and restricted. Factors that may be relevant include: practicability; whether the hazard was solely on the defendant's property or shared across both parties' properties; any underlying statutory framework; and whether remedial work would benefit both parties.

The Court then applied these principles to the present case. It noted that the remediation scheme proposed by one of the experts, Dr Kupec, (which would involve the construction of two protective bunds) was estimated to cost at least $1.6m plus GST. This could well exceed the value of what was preserved, and would not enable full use of the land or visual amenity. There would also be implementation difficulties in obtaining the necessary resource consents. Moreover, the hazard is on both the land owned by Mr Young and that purchased by the Crown. A final relevant matter was that the Crown only acquired the clifftop land in the context of a natural disaster. It acquired the land in order to ensure equitable and safe outcomes, in a situation of some complexity and where it was faced with a number of calls on its resources.

When the relevant matters were considered, the Court saw this case as one where nothing further was required of the Crown than to warn Mr Young of the risks and assist with access to his property. The Crown had done both of these things and therefore had met its measured duty of care. It followed that there was also no obligation on the Crown to compensate Mr Young for his loss in the manner he sought.

These contextual matters underlay the Court's view that the red zone offer was not related to the measured duty. The making of that offer is not something that would be required of a private landowner. Nevertheless, the Court recorded that the red zone offer remained open for Mr Young to accept.

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