IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA487/2022
[2023] NZCA 206

BETWEEN	JOHN ARTHUR SNEESBY Applicant
AND	SOUTHERN RESPONSE EARTHQUAKE SERVICES LIMITED Respondent

Court: Courtney and Collins JJ

Counsel: GDR Shand for Applicant
T C Weston KC and K M Paterson for Respondent

Judgment: (On the papers) 2 June 2023 at 10.30 am

JUDGMENT OF THE COURT

A The application for leave to appeal is declined.

B The applicant must pay the respondent costs for a standard appeal on a band A basis with usual disbursements.

REASONS OF THE COURT

(Given by Courtney J)

Introduction

[1] John Sneesby's property was damaged in the Christchurch earthquakes. He received payments from the Toka Tū Ake | Earthquake Commission (EQC) and from

his insurer, Southern Response Earthquake Services Ltd (Southern Response).[1] These payments were made in the context of proceedings Mr Sneesby had brought against both the EQC and Southern Response and were the subject of settlement and discharge agreements (SDAs) entered into in 2014 (the 2014 SDA) and in 2017 (the 2017 SDA).

[2] Mr Sneesby has brought fresh proceedings against Southern Response seeking compensation for losses resulting from Southern Response's conduct in settling his claims for damage to items not covered by the Earthquake Commission Act 1993 (EQC Act) — so called "out of scope" (OOS) items. He applied for an order permitting him to bring the proceedings as a representative proceeding.[2] The Judge declined that application.[3] Associate Judge Lester also declined leave to appeal that decision.[4]

[3] Mr Sneesby wishes to appeal the Judge's decision refusing to allow the proceedings to brought as a representative action. Although Mr Sneesby considers that he has a right of appeal, he has nevertheless applied to this Court under s 56(5) of the Senior Courts Act 2016 (SCA) for leave to appeal.

Relevant principles

Mr Sneesby requires leave to appeal

[4] Section 27 of the SCA confers a right of appeal against any order or decision of an Associate Judge, subject to s 56, which relevantly provides that:

> **56 Jurisdiction**
>
> (1) The Court of Appeal may hear and determine appeals—
>
> (a) from a judgment, decree, or order of the High Court:
>
> …
>
> (2) Subsection (1) is subject to subsections (3) and (5) and to rules made under section 148.

---

1 Mr Sneesby's insurance policy was held with AMI Insurance Limited (AMI), whose responsibilities were taken over by Southern Response. For convenience we refer only to Southern Response.

2 High Court Rules 2016, r 4.24. The proceedings were originally brought in the District Court but transferred to the High Court to enable Mr Sneesby to advance his application.

3 *Sneesby v Southern Response Earthquake Services Ltd* [2022] NZHC 262.

4 *Sneesby v Southern Response Earthquake Services Ltd* [2022] NZHC 2100.

> (3) No appeal, except an appeal under subsection (4), lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.
>
> (4) Any party to any proceedings may appeal without leave to the Court of Appeal against any order or decision of the High Court—
>
> (a) striking out or dismissing the whole or part of a proceeding, claim, or defence; or
>
> (b) granting summary judgment.
>
> (5) If the High Court refuses leave to appeal under subsection (3), the Court of Appeal may grant that leave on application made to the Court of Appeal within 20 working days after the date of the refusal of leave by the High Court.
>
> (6) If leave to appeal under subsection (3) or (5) is refused in respect of an order or a decision of the High Court made on an interlocutory application, nothing in this section prevents any point raised in the application for leave to appeal from being raised in an appeal against the substantive High Court decision.

[5] Mr Sneesby maintains that he does not require leave to appeal the Judge's decision because, although the decision does not fall within s 56(4), it nevertheless had the effect of finally resolving the substantive proceeding. For this submission, Mr Shand relied on the Supreme Court's observation in *Siemer v Heron*:[5]

> [33] But where an interlocutory decision which is the subject of an appeal would be dispositive of the case either in law or as a practical matter, the Court of Appeal would ordinarily proceed to hear and determine it before the substantive issue is addressed by the High Court …

[6] However, *Siemer v Heron* pre-dated the SCA. It is clear from s 56(3) that only those decisions identified in s 56(4) may be the subject of an appeal as of right. Otherwise, leave is required. In *Ngai Te Hapu Inc v Bay of Plenty Regional Council*, the Court of Appeal expressly rejected an argument made in reliance on the statement in *Siemer* that leave should ordinarily be granted to determine an appeal that would be dispositive of the case either in law or as a practical matter.[6] In doing so, the Court noted that the Supreme Court's observation was made in the context of recognising

---

5 *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309.

6 *Ngai Te Hapu Inc v Bay of Plenty Regional Council* [2018] NZCA 291 at [17].

the Court of Appeal's discretion to hear appeals (under s 66 of the Judicature Act 1908) in advance of the trial.[7]

[7] We reiterate the observations made by Goddard J in *Dokad Trustees Ltd v Auckland Council*:[8]

> [10] The scheme of s 56 is that appeals as of right are reserved for final determinations in respect of a proceeding. A leave filter applies to appeals from decisions on interlocutory applications in order to avoid delay and unnecessary cost. The underlying assumption is that such decisions are made in the course of a proceeding, and appeal rights should be exercised when the proceeding comes to an end. If a procedural decision has affected the ultimate outcome, that issue can be raised in an appeal against the substantive High Court decision that concludes the proceeding: see s 56(6). I consider that s 56(4) must be interpreted purposively, to apply to decisions that have the effect of bringing to an end the whole of a proceeding. Such a decision is, for the purposes of s 56(4), a decision that dismisses the proceeding.

[8] In the present case, Mr Sneesby's substantive proceedings remain on foot and he may continue to advance them. Any challenge to the Judge's conclusions regarding the effect of the 2017 SDA is properly determined in the context of an appeal against the substantive decision.

Approach to application for leave

[9] The requirement for leave to appeal an interlocutory decision is intended to filter out appeals that lack merit or are insignificant.[9] The applicable principles were summarised in *Greendrake v District Court of New Zealand*:[10]

> (a) a high threshold exists;
>
> (b) the applicant must identify an arguable error of law or fact;
>
> (c) the alleged error should be of general or public importance warranting determination or otherwise of sufficient importance to the applicant to outweigh the lack of general or precedential value;
>
> (d) the circumstances must warrant incurring further delay; and
>
> (e) the ultimate question is whether the interests of justice are served by granting leave.

---

7 At [17].
8 *Dokad Trustees Ltd v Auckland Council* [2022] NZCA 177.
9 *Finewood Upholstery Ltd v Vaughan* [2017] NZHC 1679 at [13].
10 *Greendrake v District Court of New Zealand* [2020] NZCA 122 at [6].

[10] In *Ngai Te Hapu Inc v Bay of Plenty Regional Council* this Court observed that:[11]

> [17] … leave to appeal [an interlocutory decision] should only be granted where the significance or implications of an arguable error of fact or law, either for the particular case or for the applicant or as a matter of precedent, warrants the further delay which the appeal process would involve.

The nature of the proceedings and background to the application

[11] Mr Sneesby's insurance policy covered the cost of repairing his house to the extent that the cost exceeded the cover provided under the EQC Act.[12] The policy also covered paths, driveways and fencing, which were not covered by the EQC Act — the OOS items.

[12] Mr Sneesby made a claim on the EQC for damage up to the statutory cap. He claimed under his policy for repair costs that exceeded the cap, and for the OOS items. The cost of repairing the house was assessed as within the EQC cap and Mr Sneesby dealt with the EQC in respect of that damage. This left only the OOS items. Southern Response's agent provided a written scope of works for the OOS items. Mr Sneesby accepted a cash payment for those items. The parties executed the 2014 SDA.

[13] In 2016, Mr Sneesby commenced proceedings against both EQC and Southern Response asserting that the cost of repairing the house exceeded the EQC cap. As against Southern Response, he sought judgment in the amount required to reinstate or a declaration that Southern Response was liable to pay the cost of rebuilding the house to an as new condition. Mr Sneesby's statement of claim pleaded that:

> 53. The plaintiff executed [the 2014 SDA] with [Southern Response] in respect of earthquake damage to the concrete driveway, paths, patio pavers and shared fence that is covered by the insurance policy ("the DFPP").
>
> …

---

11 *Ngai Te Hapu Inc v Bay of Plenty Regional Council*, above n 6.

12 Cover under the EQC Act was then capped at $100,000 plus GST.

> 56. The plaintiff and [Southern Response] never intended to settle any other damage than the specific out of scope items of the DFPP.
>
> 57. If the [2014 SDA] did settle all of the plaintiff's claims under the insurance policy (which is denied), then the plaintiff entered into the [2014 SDA] under a mistake that [Southern Response] would pay $29,588.70 to reinstate earthquake damage to the DFPP only, and would settle any further earthquake damage to the insured property, that is over the statutory cover, at a later date and by separate agreement.

And sought relief that included:

> A An order under section 7 of the Contractual Mistakes Act 1977 for cancellation of the [2014 SDA] …

[14] The proceedings were settled with the 2017 SDA. The background recital included:

> E. On 4 September 2010, the Insured Property was damaged by an earthquake. There has been, or may have been, further damage caused by subsequent aftershocks or earthquakes, up to 5 April 2012 (the "Events").
>
> F. The Plaintiff lodged claims with Southern Response for the Insured property under claim number D3473938 …
>
> G. A dispute arose between the Plaintiff and Southern Response regarding the extent to which the Plaintiff is entitled to be indemnified under the Policies for damage to the Insured Property as a result of the Events ("Dispute").
>
> H. The Plaintiff issued proceedings against the Earthquake Commission and Southern Response in the High Court (CIV-2016-409-1009) ("Proceeding").
>
> I. The proceeding was funded by CRS.
>
> J. The parties record that Southern Response and the Plaintiff have previously settled the Policyholder's claims for items outside the scope of EQ Cover under Schedule 2 of the Earthquake Commission Act 1993.
>
> K. The Parties have agreed to resolve all issues arising directly or indirectly out of the Events, the Claim, the Dispute and the Proceeding on the terms set out in this Agreement.

[15] The operative terms of the 2017 SDA recorded that Mr Sneesby had agreed to discontinue the proceeding on the basis that he accepted that the cost to reinstate the earthquake damage to his house did not exceed the statutory cap and that he agreed to

pay $5,000 towards Southern Response's legal costs and disbursements. Relevantly, the agreement provided:

> 1. The terms of this Agreement are in full and final settlement of all issues between them arising directly or indirectly from the Events, the Claim, the Dispute and the Proceeding.
>
> …
>
> 7. The Discontinuance and Costs Settlement are accepted by Southern Response in full and final settlement and discharge of any claims the Plaintiff and Southern Response have or might have against the other arising directly or indirectly out of, or in connection with the Events, Discontinuance, Proceeding and/or the Policies and/or the loss or damage to the Insured Property, whether such claims arise under contract, statute, common law or equity; are in existence now or may arise sometime in the future; are known or unknown; and/or are in the contemplation of the Parties or otherwise; and/or arise following a subsequent Court decision that states the law in a way different to the understanding of one or more parties to this Agreement.
>
> …
>
> 14. Except on the basis that the terms of the Settlement Agreement are breached, this Agreement may be pleaded by Southern Response as an absolute bar to any further or other claim arising directly or indirectly out of the Events, the Claim, the Dispute or the Proceeding.

[16] Notwithstanding the 2017 SDA, Mr Sneesby commenced the present proceedings. It is evident that the proceedings were prompted by the decisions of this Court and the Supreme Court concerning the entitlement of policy holders to allowances for margin, professional fees and contingencies,[13] including where such items had been omitted from claim settlement documents offered to policy holders before 1 October 2014, when this Court released its judgment in *Avonside Holdings Ltd v Southern Response Earthquake Services Ltd.*[14]

[17] Mr Sneesby asserts that the 2014 written scope of works for the OOS items prepared on behalf of Southern Response made no express allowance for preliminary and general items, margin, a contingency and professional/design fees, resulting in a

---

13 *Avonside Holdings Ltd v Southern Response Earthquake Services Ltd* [2014] NZCA 483; and *Southern Response Earthquake Services Ltd v Avonside Holdings Ltd* [2015] NZSC 110, [2017] 1 NZLR 141.

14 *Avonside Holdings Ltd v Southern Response Earthquake Services Ltd*, above n 13; and see *Dodds v Southern Response Earthquake Services Ltd* [2019] NZHC 2016, [2019] 3 NZLR 826; and *Southern Response Earthquake Services Ltd v Dodds* [2020] NZCA 395, [2020] 3 NZLR 383.

shortfall to him of (depending on which items attracted an allowance) either $6,213.63 or $9,793.86.[15] He alleges misleading and deceptive conduct under ss 9, 11 and/or 13 of the Fair Trading Act 1986 (FTA) and breaches of contractual obligations.

[18] It appears that there are between 7,500 and 9,500 other policy holders who received cash settlements for OOS items without allowances for margin, contingency and professional fees.

The High Court decision declining leave to bring representative proceedings

[19] Southern Response raised several grounds of opposition to Mr Sneesby's application in the High Court but its main ground of opposition was the lack of merit in the substantive proceeding because the 2017 SDA acted as a complete bar to the claim. This was the ground the Judge focussed on.

[20] Southern Response sought to distinguish Mr Sneesby's case from *Dodds v Southern Response Earthquake Services Ltd* on the basis that there had been no withholding of information from homeowners in relation to OOS claims because (except in a very small percentage of cases) OOS claims involved straightforward repairs that did not require a detailed repair/rebuild analysis (DRA) that was a feature in *Dodds*.[16] It also relied on the fact that, as a result of the *Dodds* litigation, it had prepared a settlement "Package" for insureds in that position which was being extended to policy holders who had settled OOS claims only.

[21] Mr Sneesby had argued that the terms of the 2014 SDA, particularly Background paragraph J, excluded OOS items from the settlement so that there was no bar to proceedings brought in relation to those items. The Judge rejected this, concluding:[17]

> [43] Given the 2016 proceeding referred to damage covered by the OOS claim the 2014 Settlement Agreement and sought relief in relation to that Agreement, it is untenable to say the parties intended to settle all claims known or unknown, present or future, arising directly or indirectly from the insurance claim referred to in the 2017 Settlement Agreement *save* for those issues connected to the OOS claim. Such would have required careful drafting.

---

15 In the High Court Mr Sneesby indicated that he was not pursuing any claim for margin.
16 *Dodds v Southern Response Earthquake Services Ltd*, above n 14.
17 *Sneesby v Southern Response Earthquake Services Limited,* above n 3.

> [44] … The 2017 Settlement Agreement was intended to mark an end to all and any claims Mr Sneesby had or might have. The wording could not be plainer.
>
> [45] It follows that, in my view, Mr Sneesby is not a suitable representative plaintiff as *his* claim is, to use the language of the Court of Appeal, "plainly meritless". There is no point in granting leave to Mr Sneesby to bring a representative claim where his claim is subject to such a fundamental weakness, having signed a robust and comprehensive full and final settlement agreement.
>
> [46] I conclude Mr Sneesby's claim will be barred by the 2017 Settlement Agreement.

[22] The Judge went on to make a number of (obiter) observations about other aspects of the application. Specifically, he did not accept that there had been an adequate articulation of the common issues and responses, that the availability of the Southern Response settlement Package provided benefit had to be taken into account in considering the benefits to be had from a representative action and that the definition of the class to be represented was inadequate.[18]

[23] The Judge also rejected a proposal by Mr Sneesby that another homeowner said to be in a similar position but who had not signed a settlement agreement with Southern Response should be named as the representative plaintiff in his stead. There was no formal application made in respect of that person.[19] The application before the Court related only to Mr Sneesby and he was, for the reasons the Judge gave, unsuitable as a representative plaintiff.[20]

Mr Sneesby's application for leave to appeal

Grounds of appeal

[24] Mr Shand has identified a number of proposed grounds of appeal which can be summarised broadly as being that the Judge erred in finding that:

(a) the 2017 SDA bars the proceedings;

(b) the common issues were insufficiently identified; and

---

18 At [53]–[54], [56], [61]–[62] and [64]–[64].
19 At [48]–[50]
20 At [45].

(c) the Package being proposed by Southern Response represented a "quick and clean" settlement compared to a class action.[21]

[25] In addition, Mr Shand submits that the Judge has failed to consider the effect of the limitation on the claims that many thousands of other homeowners with essentially the same settlement and discharge agreements. As a result, the Judge has failed to properly consider the question of access to justice for other policy holders.

[26] Of these, only the first relates to the ratio of the Judge's decision. Southern Response submits that the other grounds are based on statements that cannot be treated as a "judgment, decree, or order" for the purposes of s 56(1)(a) of the SCA.[22] We accept that submission and direct our attention to the main issue — whether the Judge erred in finding that the 2017 SDA is a bar to Mr Sneesby's proceedings.

An arguable error of law?

[27] Mr Shand, for Mr Sneesby reprises the arguments advanced in the High Court in relation to both the r 4.24 application and the application for leave to appeal. Specifically: the 2017 SDA expressly excludes claims for OOS items; the proceedings that were settled by the 2017 SDA did not seek any relief for the OOS claim; Mr Sneesby did not know he had a claim for misleading conduct by Southern Response in relation to the OOS items when he signed the 2017 SDA; and it is not possible for Southern Response to limit or exclude liability under the FTA.

[28] These arguments rely substantially on the High Court decision in *Dodds*.[23] In *Dodds,* Southern Response was found to have represented that the cost of repairing the plaintiffs' house was that shown in an abridged version of the "Detailed Repair/Rebuild Analysis" (DRA) provided to the homeowners.[24] However, the unabridged version of the DRA contained provision for additional costs such as professional fees and project contingency. Southern Response maintained that the plaintiffs' claims in misrepresentation and for breach of the FTA were precluded by an

---

21 At [62].

22 Relying on *Re Siemer* [2020] NZCA 393 at [23]; and *Amalgamated Builders Ltd v Nile Holdings Ltd* (2000) 14 PRNZ 652 (CA) at [23] and [24].

23 *Dodds v Southern Response Earthquake Services Ltd*, above n 14.

24 At [81].

agreement between it and the plaintiffs, settling claims made "under the policy" and claims "in respect of any complaint, claim or right of action … known or unknown, which arises directly or indirectly" out of the earthquakes. Gendall J held that Southern Response was liable in misrepresentation and for breach of the FTA.[25] He also held that the wording of the settlement agreement was not broad enough to exclude such claims and, even if it were, Southern Response could not contract out of its liability under the Contract and Commercial Law Act (CCLA) and the FTA.[26] These conclusions were not challenged on appeal.[27]

[29] While the decision in *Dodds* shows that a claim of the kind being asserted by Mr Sneesby will not necessarily be barred by a settlement agreement, the outcome must turn on the circumstances of the case and the wording of the particular agreement. Mr Weston KC, for Southern Response, supporting the Judge's decision, seeks to distinguish the present case from *Dodds* in the following ways.

[30] First, unlike *Dodds*, Mr Sneesby was not induced to enter the 2017 SDA by a misrepresentation as to the scope of the works — the scope of works provided to Mr Sneesby was the same as that held by Southern Response itself whereas in *Dodds*, the plaintiffs were provided with an abridged scope of works. Mr Shand responds that the lack of a DRA does not mean that no representation was made, pointing out that in *Dodds*, this Court identified a letter, an information sheet and a settlement election form as, themselves, representing that the amounts referred to were the realistic estimate of the rebuilding cost.[28] In Mr Sneesby's case (and others who settled OOS claims on a cash basis), the written scope of works and accompanying email conveyed that the amount identified represented the realistic estimate of remediating the OOS items.

[31] We accept that, in principle, the provision of a written scope of works, even without Southern Response holding an inconsistent internal version, could arguably amount to a representation as to the true cost of remediation. As noted,

---

25 At [116], [139], [145] and [148].
26 At [193]–[194].
27 *Southern Response Earthquake Services Ltd v Dodds*, above n 14. The Judge's conclusion on liability was upheld.
28 At [116]–[120].

Southern Response asserts that virtually all OOS claims did not require allowances for professional fees and margin. However, that is a question of fact and not amenable to resolution at this stage. For present purposes we proceed on the basis that it is arguable that a scope of works and accompanying correspondence could amount to a representation as to the cost of remediation.

[32] The second broad issue relates to the effect of the 2017 SDA: whether it is arguable that the Judge erred in finding that it captured the OOS claim and was a valid settlement of any FTA liability, thereby creating a bar to the present proceedings. We see no arguable error in the Judge's conclusion that the 2017 SDA excluded the OOS claim. In the 2016 proceedings, Mr Sneesby sought relief that would, if granted, have resulted in 2014 SDA relating to the OOS items being set aside. That would have allowed Mr Sneesby to reopen the OOS claim. It cannot tenably be suggested that the 2017 SDA, entered into for the purpose of settling the 2016 proceeding, expressly excluded the OOS claim.

[33] Nor do we see any tenable argument that the Judge erred in concluding that the 2017 SDA is a bar to the proceeding, even though the proceedings are based on alleged misleading and deceptive conduct by Southern Response during the settlement of Mr Sneesby's insurance claim, rather than seeking payment in terms of the insurance policy.

[34] The 2017 SDA relevantly provides that:

(a) It is to be a "full and final settlement of all issues … arising directly or indirectly from the Events, the Claim, the Dispute and the Proceeding", expressly permitting it to be raised as a bar in future proceedings arising out the "Events", the "Dispute" and the "Proceeding" as defined in the agreement.

(b) Southern Response accepts the discontinuance and costs in full and final settlements of any claims Mr Sneesby had or might have "arising directly or indirectly out of, or in connection with the Events,

Discontinuance, Proceeding and/or the Policies and/or the loss or damage to the Insured Property".

(c) The agreement could be pleaded as an absolute bar to any further or other claim "arising directly or indirectly out of the Events, the Claim, the Dispute or the Proceeding".

[35] The SDA in *Dodds* was similar to the 2017 SDA. Gendall J analysed the wording of the SDA and concluded that, while the claim for misleading and deceptive conduct might be said to have occurred "in connection with" the earthquakes, it could not be said to have "[arisen] out of the earthquakes", nor the insurance claim, nor the damage to the insured property because that required actual causation. Rather, the claim was the result of Southern Response's own conduct.[29] As noted, this conclusion was not challenged in the appeal against Gendall J's decision.

[36] In the present case, the Judge did not undertake a similar close analysis of the wording but instead took a broader approach. However, although the 2017 SDA is not identical to the settlement agreement in *Dodds*, the same issue arises as to the precise ambit of the words. Clauses 1 and 14 apply to claims "arising directly or indirectly" from the defined "Events", "Claim", "Dispute" and the "Proceeding". These words require a causal relationship.[30] On Gendall J's approach in *Dodds,* alleged misleading and deceptive conduct by Southern Response would not be described as arising directly or indirectly from the defined "Events" "Claim", "Dispute", or "Proceeding" and clauses 1 and 14 would therefore not bar the proceedings.

[37] However, clause 7 is wider and extends to claims "arising … in connection with the Events, Discontinuance, Proceeding and/or the Policies and/or the loss or damage to the Insured Property …". The phrase "in connection with" is recognised as being of the widest ambit.[31] It merely requires a nexus between one thing and another, though the nature and closeness of the required connection depends on

---

29 At [191]–[192].
30 *AMI Insurance Ltd v Legg* [2017] NZCA 321, [2017] 3 NZLR 629 at [24].
31 At [24].

context and purpose.[32] Not only does clause 7 record an agreement to settle proceedings brought to enforce a policy entitlement in relation to damage to property resulting from the earthquakes, it also records an agreement not to bring any further claims in connection with those matters. It is not tenable to suggest that there is no nexus between them and complaints about the way Southern Cross conducted itself during the settlement process.

[38] The fact Mr Sneesby was not aware of a possible FTA claim did not preclude his being able to settle future claims. This is not a situation where Southern Response sought to exclude its liability. Rather, the parties to litigation were seeking, after two sets of proceedings and a previous SDA, to ensure that all matters between them having to do with the earthquake damage to Mr Sneesby's property were resolved.

[39] We do not consider it arguable that the Judge erred in his conclusion regarding the merits of the proceedings. Given that conclusion, it is unnecessary to consider the other aspects raised by Mr Sneesby in relation to the arguments that the Judge dealt with in obiter comments.

[40] In the absence of any arguable error by the Judge, the other considerations relevant to leave fall away.

Result

[41] The application for leave to appeal is declined.

[42] The applicant must pay the respondent costs for a standard appeal on a band A basis with usual disbursements.

Solicitors:
Grant Shand, Auckland for Applicant
Buddle Findlay, Christchurch for Respondent

---

[32] At [30], citing *IAG New Zealand Ltd v Jackson* [2013] NZCA 302, (2013) 17 ANZ Insurance Cases 61-982 at [24].