IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2024-409-138
[2026] NZHC 1222

BETWEEN	GREGORY PETER PERANO and JODIE AMANDA CARTER Plaintiffs
AND	BATES BUILDING LIMITED First Defendant
	STUART MANNING ARCHITECTS LIMITED Second Defendant [Discontinued]
	CHRISTCHURCH CITY COUNCIL Third Defendant
	STUART MANNING ARCHITECTS LIMITED Third Party

Hearing:	24 March 2026
Appearances:	No appearance for Plaintiffs S Caradus for First Defendant S H Macky for Third Defendant (by VMR) J J Taylor for Third Party
Judgment:	7 May 2026

JUDGMENT OF ASSOCIATE JUDGE LESTER

This judgment was delivered by me on 7 May 2026 at 2.30 pm
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

[1] In 2013, the plaintiffs were the owners of a steep hillside property in Lyttelton. The property was damaged when hit by a runaway van. The property required significant repairs. During the course of the repair work, the plaintiffs also took the opportunity to have additional work undertaken.

[2] Stuart Manning Architects Limited (SMAL) was engaged by the plaintiffs' insurer to prepare drawings for the repairs and alterations to the property.

Timeline

[3] The following is a brief timeline:

(a) The first drawings prepared by SMAL are from June 2013.

(b) The building process commenced in October 2013 with the first defendant, Bates Building Limited (BBL), requested to tender for the work.

(c) In October 2013, SMAL applied for a building consent.

(d) BBL quoted for the work towards the end of October 2013.

(e) BBL was, at the end of November 2013, engaged to do the building work.

(f) The Christchurch City Council (the Council) approved the plans at the end of November 2013.

(g) The work commenced January 2014 with Council inspections beginning the following month.

(h) The work was completed on or about 6 June 2014.

(i) Final inspections by the Council occurred in July and August 2014.

(j) A Code Compliance Certificate was requested in October 2014.

(k) The Code Compliance Certificate was issued on or about 28 December 2014.

[4] In May 2023, the plaintiffs discovered moisture in the property and issued proceedings against BBL, SMAL and the Council. The causes of action against BBL is in breach of contract and in negligence. The causes of action originally against SMAL and the Council were in negligence. The proceedings against SMAL were not served and were discontinued because of the long stop limitation period.

[5] BBL and the Council have cross-claimed against SMAL seeking contribution.

[6] SMAL seeks summary judgment as a defendant in relation to both third party claims.

Principles when summary judgment sought by defendant

[7] The applicable principles are not in dispute. Summary judgment is not suitable where there are material disputes of fact, unless the applicant can show the allegations are "utterly baseless".[1]

[8] The threshold for a summary judgment by a defendant is high and, as in a strike-out application, SMAL must show the claims against it "cannot succeed".[2]

[9] A defendant must be able to "knock out the entire claim" before it is entitled to summary judgment.[3]

Summary judgment by a third party

[10] There is no doubt that a third party may seek summary judgment as a defendant against the party claiming against them.[4] While the principles summarised above

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1 *Harry Smith Car Sales Pty Ltd v Claycom Vegetable Supply Co Pty Ltd (1978) 29 ACTR 21; and Attorney-General v Rakiora Holdings Ltd* (1986) 1 PRNZ 12 at 14.

2 *Ferrymead Tavern Ltd v Christchurch Press Ltd* (1999) 13 PRNZ 616 at [10] and [11].

3 Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters) at HR 12.2.07(1).

4 See *Beca Carter Hollings & Ferner Ltd v Wellington City Council* [2024] NZSC 11, [2024] 1 NZLR 438. See [1] to [8] for the facts of the case.

apply to such an application, such an application is made in a very different context. By that I mean, a defendant who joins a third party generally denies the plaintiff's claim but says that if the plaintiff's claim succeeds, the defendant considers the third party shares in that liability and therefore seeks contribution from them. A defendant, in the course of defending the plaintiff's claim, will likely produce evidence that disputes the plaintiff's claim and their evidence may well be consistent with that of the third party. The defendant and third party usually have a common interest in defeating the plaintiff's claim.

[11] In my view, this means it is a false comparison for a third party to say that the defendant's evidence and the third party's evidence are consistent in respect of the third party's liability and therefore the defendant cannot succeed in its claim for contribution. The defendant, in opposing the plaintiff's claim, may well take a position that does not disclose a breach by the third party.

[12] However, if the plaintiff succeeds against the defendant, then the defendant's evidence will, in whole or in part, have not been accepted. This means that if a third party seeks summary judgment on the basis of an examination of the evidence, the correct comparison is between the plaintiff's case and the third party's case. In a practical sense, this will mean that for a third party to obtain summary judgment against the defendant based on the facts, the third party will need to demonstrate that they could not have been liable to the plaintiff had the plaintiff been able to bring a claim directly against the third party. Because of the different approach to limitation in this context, the fact a plaintiff's claim against the third party is statute-barred will not suffice.

[13] In this case, Mr Taylor for SMAL, with reference to a table comparing the "evidence" sought to demonstrate that to each of the alleged design defects the plaintiffs include in their claim against the defendants will fail. In the table, the position of the plaintiffs is based on a Prendos report from 30 November 2023. This proceeding was issued on 28 March 2024. The second statement of claim was filed on 8 July 2025.

[14] Mr Caradus, counsel for BBL, points out that the plaintiffs' evidence is not before the Court in this application. The plaintiffs may well call further evidence in addition to the Prendos report—or they may not rely on that report at all. Similarly, BBL's evidence may well not be restricted to the Burford report of 29 January 2025.

[15] Unless the extent of a plaintiff's evidence is certain, a third party's application for summary judgment based on facts, in my view, needs to proceed on the basis that the allegations in the plaintiff's statement of claim are presumed to be capable of proof. Were it otherwise, a defendant facing a summary judgment by a third party based on the facts would need to, in some cases, file evidence against their own position— that is, file evidence that may support the plaintiff's claim against them in order for the defendants to establish the merit of their contribution claim against the third party.

[16] The above discussion shows the basis of the third party's summary judgment application must be considered in each case. If a third party's application for summary judgment is based on a contractual defence they have against the defendant who has joined them, that will be the focus of the application. But where a third party's summary judgment application is based on evidence, the focus is different. In this case, the merits of the plaintiffs' claim against the defendants is untested, as are the merits of any claim the plaintiffs could have brought against SMAL. Those merits cannot be determined on the assumption that the reports referred to in Mr Taylor's comparative table of evidence referred to at [13] will be the only evidence, or that such evidence will be accepted. As Mr Taylor properly acknowledged in oral submissions, building disputes that rely on expert evidence are generally regarded as unsuitable for the summary judgment procedure.[5]

[17] An example of a successful application of a third party for summary judgment is *Body Corporate 203710 v Auckland City Council* which illustrates the point.[6] There, the Auckland City Council joined a number of third parties including a building inspection company (BCCL). BCCL had provided pre-purchase reports to two buyers in a multi-unit building which turned out to be a leaky building. In respect of one buyer, a Ms Tubman, the Court recorded there was a conflict of evidence as to whether

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5 See *McGechan on Procedure*, above n 3, at HR 12.1.08.

6 *Body Corporate 203710 v Auckland City Council* [2012] NZHC 3597.

there had been oral statements by the building inspector to Ms Tubman that may have changed the import of BCC's written report.[7]

[18] BCCL asserted that, even if the oral representations had been made, Ms Tubman did not rely on any oral statement by BCCL that the unit was weathertight or sound. The contemporary correspondence showed Ms Tubman or her agents knew the unit or the development generally suffered from water ingress and that Ms Tubman's primary concern was to ascertain how costs associated with the repair works would be apportioned between unit holders. Peters J concluded:[8]

> … the Council does not allege Ms Tubman relied on the oral statements that she alleges were made to her on behalf of BCCL. Even if such an allegation were to have been made, then it would have to be for the Council to succeed against BCCL, I accept BCCL's submission that this correspondence is evidence that Ms Tubman did not rely on any such statements in proceeding with the purchase of unit 1.

[19] On that basis, Peters J concluded that the Council's claim against BCCL in respect of unit 1 could not succeed. The evidence satisfied her Honour that reliance could not be established.[9]

[20] In respect of the second unit, the evidence showed that its purchaser, a Mr Reid, had already signed an unconditional contract before the alleged representations by BCCL had been made about the building.[10]

[21] Peters J said:[11]

> To have any prospect of success against BCCL in respect of the statements said to have been to the Reids, the Council would have to establish that the statements proceeded the Reids becoming bound to purchase unit 14. As counsel for the Council acknowledged in submissions, there is no prospect of the Council doing so as matters stand at present.

[22] In each claim, the Court based its grant of summary judgment on an assessment of the strength of the evidence of the plaintiffs who owned the two units in relation to any claim they could have brought against BCCL. The Court was able to do that in

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7 At [30].
8 At [37].
9 At [38].
10 At [39].
11 At [43].

relation to unit 1 because, in respect of reliance, the contemporary correspondence unequivocally showed Ms Tubman did not rely on the oral representations by BCCL. Any claim Ms Tubman had against BCCL would have failed on that basis. As regards unit 2 owned by Mr Reid, the undisputed timing of that purchase meant that the claim against BCCL could not have succeeded.

[23] The evidence in *Body Corporate 203710* permitted a third party summary judgment based upon the facts because such were either recorded in contemporary correspondence or the timing of events was not disputed. In respect of both unit 1 and unit 2 claims, summary judgment was based on an assessment of the strength of each plaintiff's claim had it been brought directly against the third party.

[24] In my view, the nature of the claims in this case and the nature of the evidence means that type of assessment is not possible.

The basis of the summary judgment application in this case

[25] The application for summary judgment states that SMAL could not have been liable to the plaintiffs had it been sued by them in tort. SMAL says it performed its contract with the insurer having provided a repair strategy on which building consent and Code Compliance was obtained and, thereafter, it had no further involvement.

[26] SMAL says its actions were not causative of any loss in respect of the damage for which it could be liable.

[27] In respect of the third party claim by the Council, SMAL argues the plaintiffs' claim regarding the building consent was time-barred, and, in regard to a possible claim by the plaintiffs arising from the Code Compliance Certificates, either the Council was not negligent or SMAL did not cause the loss.

Contribution claims

[28] Mr Taylor addresses the law of contribution in his submissions.

[29] Mr Taylor submits that defendants can join third parties to a proceeding on the basis of a claim for contribution for the "same damage".[12]

[30] Referring to *Hotchin v New Zealand Guardian Trust Co Ltd*, Mr Taylor submits that the key principle is that the contribution must be sought for the same loss. "[I]t is the overlap only that constitutes the 'same damage' in respect of which contribution is available".[13]

[31] *Hotchin* was applied in *AMG Trust Ltd v Skellerup Industries Ltd*, which concerned non-weathertight cladding.[14] The third parties applied for a strike-out and summary judgment. Skellerup, the defendant cladding manufacturer, claimed that the third party builder had contributed to the claimed damage by negligently installing the timber battens upon which the timber was fixed.[15] The Court held that this was a contribution claim for the same damage—that is, the defective cladding.[16]

[32] In *Minister of Education v James Hardie New Zealand*, the third party councils applied unsuccessfully to strike out a contribution claim on the basis that it was not in respect of the "same damage".[17] The Court stated at [210]:

> [A]s the majority made clear in *Hotchin*, it does not matter that the liability of the defendant and the third party may not be co-extensive; as the Chief Justice explains, there may be overlapping liability in respect of *part only* of the same damage. In such cases, it is only the overlap in respect of which contribution can be claimed.

[33] The claimed loss was defective cladding in over 800 school buildings. The defendant's alleged wrongdoing was manufacturing the defective cladding, while the Councils' alleged wrongdoing was carrying out supervision of the design and construction and issuance of Code Compliance Certificates.[18] The Court held that even though these actions were different, they could still contribute to the same

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12 *Hotchin v New Zealand Guardian Trust Co Ltd* [2016] NZSC 24, [2016] 1 NZLR 906.
13 *Hotchin*, above n 12, at [142].
14 *AMG Trust Ltd v Skellerup Industries Ltd* [2018] NZHC 3056.
15 At [8].
16 At [26]-27].
17 *Minister of Education v James Hardie New Zealand* [2018] NZHC 22.
18 At [2].

physical damage being the structural damage to the building structures as a result of water ingress through the cladding.[19]

[34] Mr Taylor also relies on a passage from Walker J's decision in *Body Corporate 366567 v Auckland Council* [*Gore Street Apartments*].[20] Mr Cowey set out part of the passage from [535] of the judgment. The full passage is set out in BBL's submissions as follows:

> As Clark Brown is in liquidation, the claims against it proceeded by way of formal proof. The claims were not pressed by the plaintiffs for various reasons [including that the claim was settled pre-trial]. I am not satisfied that Clark Brown has any liability in respect of design. Even if there was inadequate detail in the design documents, there is no causal potency given that construction ultimately did not follow the design drawings and given the Holmes revised approach.

[35] Mr Taylor relies on the above passage as authority for the proposition that an architect is not liable for defects where the work was done contrary to the design. Mr Taylor submits there is no causation in those circumstances. A theme that ran through Mr Taylor's submissions was that where there is a deviation from SMAL's designs, there can be no "causal potency" where the build departs from the designs. I will return to that proposition.

The defects in more detail

[36] The alleged defects pleaded by the plaintiffs concern the flashing and water diversion details around skylights, internal barge and back flashings, roof flashings, a further flashing for a bathroom skylight; the design of a block wall and its waterproofing, what is called the 'apron flashing allegation' and whether a timber support was required for the flashing, the intersection between the old cladding system (the property being an old character property) and the new cladding system; the design of stormwater drainage and the location on the plans of a boundary rock wall.

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19 At [207]-[208].

20 *Body Corporate 366567 v Auckland Council* [2024] NZHC 32 [*Gore Street Apartments*].

SMAL's evidence in respect of the various defects

[37] Mr Stuart Manning, a director of SMAL, filed an affidavit of some 300 pages, mainly exhibits, in support of the application. The affidavit sets out Mr Manning's view as to why he considers the drawings prepared by his company, SMAL, were not negligently prepared. Mr Manning goes through each of the allegations in the statement of claim related to design to give his opinion in respect of why he considers SMAL's plans were properly prepared. His affidavit concludes:

> I consider the allegations that have been made to be entirely without merit. I support the application for summary judgment dismissing the third party claims made by the first defendant and the third defendant.

[38] There are a number of references in Mr Taylor's submissions to Mr Manning's evidence being unchallenged.

[39] The reason the evidence is unchallenged is that BBL and the Council consider Mr Manning's evidence to be inadmissible.

[40] Mr Manning filed an affidavit in reply responding to Mr Bates' reply which concludes that, in his view, his company:

> ... was required to obtain building consent for the repairs to the dwelling. The designs did comply with the building code and accordingly building consent was obtained.

and says:

> The real issue is that the builder departed from my company's consented designs and the Council failed to notice this.

[41] Mr Manning's evidence is said to be inadmissible because it contains opinion evidence from Mr Manning about his own company's workmanship and compliance with building regulations. No other affidavit evidence has been filed by SMAL.

[42] Mr Manning offers views regarding the interpretation of the Building Code,[21] waterproofing solutions, the need for timber support and the accuracy of his drawings.

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[21] Building Regulations 1992, sch 1.

[43] Mr Caradus submits that such opinions are inadmissible unless permitted by s 25 of the Evidence Act 2006.

[44] Mr Caradus notes that Mr Manning does not agree to adhere to the Fourth Schedule of the High Court Rules 2016 (the Rules), he does not list the documents or information on which he relies to form his opinion, does not detail his investigations or his assumptions, and advocates for his own position.

[45] Section 23 of the Evidence Act provides that a statement of opinion is not admissible in a proceeding except as provided by ss 24 or 25. Section 25(1) provides:

> An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

[46] Section 26 of the Act provides:

> **26 Conduct of experts in civil proceedings**
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> (1) In a civil proceeding, experts are to conduct themselves in preparing and giving expert evidence in accordance with the applicable rules of court relating to the conduct of experts.
>
> (2) The expert evidence of an expert who has not complied with rules of court of the kind specified in subsection (1) may be given only with the permission of the Judge.

[47] The relevant rule of court is r 9.43 of the Rules. It provides that an expert witness must comply with the code of conduct set out in sch 4 to the Rules.

[48] Sections 25 and 26 of the Evidence Act were discussed by the Court of Appeal in *Prattley Enterprises Ltd v Vero Insurance New Zealand Ltd.*[22] The Court set out that the Code provides that an expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise and is not to advocate for the party who engages the witness.[23]

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22 *Prattley Enterprises Ltd v Vero Insurance New Zealand Ltd* [2016] NZCA 67, [2016] 2 NZLR 750.
23 At [97].

[49] The Court said of ss 25 and 26:[24]

> They anticipate that evidence may be excluded for want of reliability, for want of impartiality, or for want of compliance with the Code. To fail to comply with the duty of impartiality is to breach r 9.43, and in consequence the evidence is presumptively inadmissible as s 26(2), subject to a discretion in the trial judge to admit it. Evidence that is not impartial is also likely to lack reliability, so it may be inadmissible under s 25 too. Significant risk attends a party's decision to rely on such a witness.

[50] The Court went on to distinguish impartiality from independence. It noted an expert witness need not be independent of the party by who the expert is briefed and any potential conflict of interest is ordinarily treated as a matter of weight. The Court goes on to explain that is because independence goes to the relationship between the expert and the party engaging the witness, while impartiality is a behavioural quality which signifies an attitude of neutrality as between the parties. An expert witness who lacks independence may nevertheless behave impartially.[25]

[51] The Court then discussed the requirements of the Code, that expert witnesses must explain their qualifications, the evidence they have relied on, the facts and assumptions upon which their evidence is based, the reasons for their opinions, and any material that they have relied on.[26] These are the factors that Mr Caradus submits are absent from Mr Manning's evidence. The Court in *Prattley* said that those requirements "allow the opposing party and the Court to evaluate the expert's evidence and opinion, initially for admissibility and ultimately for weight".[27]

[52] As to the requirement to specify any literature or other material used or relied upon in support of the opinions expressed, the Court said:[28]

> The important point for present purposes is that the Code should not be taken to mean that citing such material is optional. On the contrary, a court may think it essential when methodology is in issue and the material ought to exist.

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24 At [98].
25 At [99].
26 At [101].
27 At [101].
28 At [102].

[53] In *Woodgate Ltd v Palmerston North City Council*, Associate Judge Paulsen said:[29]

> The standards required of an expert witness are exacting and the approach taken here does not have the degree of rigour or discipline required to meet those standards.

[54] That is an observation that is apposite in this case.

[55] What Mr Manning's evidence amounts to is him saying that the case against SMAL should be dismissed because he says his company (SMAL) did nothing wrong.

[56] BBL and the Council are not making a technical point by raising the inadmissibility of Mr Manning's evidence. The point is of substance and Mr Manning is so clearly an advocate for his own position that his evidence could not form the basis of a summary judgment application based on the proposition that SMAL had done nothing wrong.

[57] I find Mr Manning's affidavit to be inadmissible for non-compliance with both s 25 of the Evidence Act and with r 9.43 of the Rules. To be fair to Mr Taylor, he accepted the opinion evidence in the affidavit was not admissible. but that, in my view, means this application cannot "knock out the entire claim".

Significance of the builder not following the designs

[58] Mr Caradus submits that Walker J's comments set out at [34] above were obiter. He submits that Walker J did not purport to create a general rule that causation is broken where a builder departs from the architect's plans.

[59] I agree with that submission. The question is one of degree. If an architect's plans were negligently drawn but the departure from them was inconsequential, this departure would not ring fence the architect from liability. Where the departure from the plans is more significant but the builder did so to address what the builder recognised was a concern, then causation would be a matter for trial. Ultimately, "causal potency" is a factual question for trial.

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[29] *Woodgate Ltd v Palmerston North City Council* [2024] NZHC 2423 at [86].

[60] I do not consider SMAL's reliance on the departure from its plans without more to be the "king hit" required to "knock out the entire claim" and does not apply to every alleged design defect. Nor do I consider the strength of the evidence such as here, to be in the same category as the *Body Corporate 203710* decision discussed above. SMAL would have to be able to show that every design-based claim against it that could have been brought by the plaintiffs would necessarily fail. It is sufficient if one of those claims proves to be unsuitable for a fact-based challenge for summary judgment to be declined.

[61] Paragraph 27.1 of the second amended statement of claim states:

> The roof skylights shown in the Drawings did not have any cricket or raking divertors designed. The Building Code and the industry code of practice for metal roofing requires cricket or raking divertors to divert and shed water away from the roof and the skylight. An absence of cricket or raking diverters enables water to pond on the roof against the skylight.

[62] BBL's Burford report asserts there is no need for crickets or divertors. The Burford report's opinion is that a review of acceptable solutions under E2 External Moisture of the Building Code show the requirement for cricket flashings is not mandatory for openings under one metre wide.

[63] Mr Manning's affidavit says that his drawings show the original skylight reinstalled as it was. That is no answer if crickets or divertors were required as part of the works. Just what is an acceptable solution under the Building Code is a matter of opinion and a matter for trial.

[64] As I have said, once one pleaded breach of duty cannot be knocked out then summary judgment is not available.

[65] Accordingly, *I decline* the application for summary judgment.

Limitation

[66] Limitation is primarily raised in respect of the third party claim by the Council.

[67] The summary judgment claim as against the Council is based on two propositions. The first is summarised by Mr Taylor in his submissions as follows:

> Regarding the building consent:
>
> 31.1 Section 393(2) of the Building Act 2004 provides that "*no relief may be granted*" to the plaintiffs against the Council for its building consent issuance; the building consent was issued more than 10-years prior to these proceedings being brought.[30] Importantly, section 393(2) prevents the granting of relief, whether it is pleaded as a defence or not.
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> 31.2 If no relief can be granted to the plaintiffs for the Council's building consent (even if negligence is established), then there is no possible Council liability to which Stuart Manning can be made to contribute.

[68] I do not accept this submission. Ms Macky, counsel for the Council, submits *Beca Carter Hollings & Ferner Ltd v Wellington City Council*, is essentially on all fours with the present case.[31] I agree. Beca brought a summary judgment application against the Wellington City Council relying on the 10-year limitation period in s 393 of the Building Act. The claim arose out of the BNZ's (which was the plaintiff) leased premises having been defectively constructed between 2006 and 2010. Beca had issued producer statements dated 19 February 2007 and 12 March 2008 which were provided to the Wellington City Council. The Wellington City Council issued Code Compliance for the building in March 2009 (superstructure) and in March 2010 (substructure) in reliance on the producer statements. BNZ issued its proceedings against the Wellington City Council on 2 August 2019. BNZ did not sue Beca, presumably because at the time more than 10 years had passed since Beca's involvement in producing its producer statements in 2007 and 2008.

[69] On 26 September 2019, the Wellington City Council brought a third party claim against Beca claiming contributions as a concurrent tortfeasor pursuant to s 17(1)(c) of the Law Reform Act 1936. Beca brought a strike out and summary judgment application against the Wellington City Council on the basis of the 10-year longstop.

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30 Proceedings were brought on 28 March 2024. The building consent was approved on 11 December 2013.

31 *Beca Carter Hollings & Ferner Ltd v Wellington City Council* [2024] NZSC 117, [2024] 1 NZLR 438. See [1] to [8] for the facts of the case.

[70] The Wellington City Council argued that its claim for contribution had a different limitation period pursuant to s 34(4) of the Limitation Act 2010, which provides a two-year period to bring a claim once liability is quantified against the Wellington City Council. The majority of the Supreme Court found that the Wellington City Council's claim against Beca was not time barred by the 10-year limitation period but that claims for contribution against other parties may be brought within two years after the defendant is found liable or settles the claim against it.[32]

[71] I accept there is a direct parallel here where SMAL's involvement allegedly ended more than 10 years prior to the date the plaintiffs issued proceedings against the Council—just as Beca's involvement had. Here, the Council is being sued for approving the allegedly defective design prepared by SMAL in the same way as the Council in the *Beca's* decision was sued for approving construction Beca had signed off in its producer statement. I note Mr Taylor's submissions did not address the *Beca* decision.

[72] I dismiss the application for summary judgment based on this ground.

[73] Mr Taylor then relies on s 94 of the Building Act 2004 that provides a Council *must* issue Code Compliance if it was "satisfied, on reasonable grounds, that the building work complies with the building consent".

[74] Mr Taylor then submits:

> 32.2 Logically, when inspections were carried out, the as-built either:
>
> (a) Complied with the consented plans, and the Council was required under section 94 to issue the code compliance certificate; or
>
> (b) Did not comply with the consented plans, and the Council decided to issue the code compliance certificate anyway.
>
> 32.3 If it was (a), the Council cannot have been negligent. Section 94 imposed a statutory duty to issue the code compliance certificate. As noted in the *Gore Street* case, a Council's duty of care is no higher than its statutory duty.[33] If the Council cannot be liable, it cannot claim contribution.

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32 At [83]-[85].

33 *Gore Street Apartments*, above n 20, at [85].

32.4 If it was (b), there was no causation, and no contribution claim is available. Stuart Manning Architects cannot cause building consent non-compliance:

(a) As reasoned by the High Court in Gore Street, "[e]ven if there was inadequate detail in the design documents, there is no causal potency given that construction ultimately did not follow the design drawings".[34]

(b) The Council's decision to issue a code compliance certificate, despite non-compliance with the consented plans, breaks any chain of causation between the claimed defects and Stuart Manning Architects.

[75] I do not accept Mr Taylor's submission contained in his paragraph 32.2(a) above. If there were reasonable grounds for the granting of the building consent, it does not follow that the granting of Code Compliance was not negligent. The inspections themselves could have been negligent irrespective of whether the consented plans were negligent or a reasonable inspection might have identified defects with the built works even if those works did comply with the building consent.

[76] As to Mr Taylor's second alternative, it is based on the obiter comment from *Gore Street Apartments* referred to at [34] above. As I do not accept that her Honour was laying down an absolute rule, I do not consider the proposition relied on by Mr Taylor is of sufficient strength to grant summary judgment.

[77] Accordingly, the application for summary judgment by the third party against the Christchurch City Council is *dismissed*.

Observation

[78] The amount in issue in this claim is very modest. It does not warrant High Court litigation. At the hearing, the parties present recognised that fact. All parties are urged to take a commercial view as to the future of this litigation.

[79] There will be a telephone conference with me at ***2.30 pm on 29 May 2026***. At that point, if counsel have not agreed on mediation or a Judicial Settlement Conference, I intend to order a Judicial Settlement Conference.

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[34] *Gore Street Apartments,* above n 20, at [535].

Costs

[80] I note there is no set practice as to the awarding of costs when an application for summary judgment fails.[35]

[81] If costs cannot be agreed then memoranda of not more than five pages, may be filed *within 10 working days*. Any reply submissions, again not more than five pages, may be filed *within 10 working days*.

Associate Judge Lester

Solicitors:
Duncan Cotterill, Christchurch
Saunders & Co, Christchurch
Heaney & Partners, Auckland
Parry Field Lawyers, Christchurch

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[35] See *McGechan on Procedure*, above n 3, at HR 12.12.08(6).