



Stadium Southland judgment

Supreme Court clarifies the duty of care owed by councils.

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On December 14, 2017 the Supreme Court released its Stadium Southland judgment. The Supreme Court allowed the appeal in part.

Background

In 1999-2000 the Southland Indoor Leisure Centre Charitable Trust had a stadium built in Invercargill.

Problems with the roof trusses were identified during construction. The trust engaged an independent structural engineer to review the design. He provided advice about how the problems could be fixed. The trust applied for a building consent for the remedial work. A letter from the engineer, setting out how the work was to be done, was attached.

Invercargill City Council granted the building consent. There would be no inspections of the remedial work by the council. Instead, the consent was subject to various conditions that the trust's engineer was to meet.

They included written confirmation that the work was completed consistently with the specifications set out in the attached letter and that individual truss measurements would be provided to the council.

The remedial work occurred in early 2000. The council followed up on compliance with the conditions of the consent without success. An interim code compliance certificate (CCC) was issued and the stadium opened in March 2000.

The council followed up again on the conditions so that a final CCC could be issued. However, before receiving this material, the council issued a CCC for the remedial work. It was not disputed that this was negligent.

In January 2001 the engineer provided further information to the council in relation to the building consent conditions. The information did not comply with the conditions. The council issued a final CCC for the stadium in April 2003.

The remedial work on the trusses was not completed consistently with the engineer's specifications and was defective.

The trust sought further advice from the engineer in 2006. It was prompted by roof leaks and reports of the collapse of a stadium in Poland under snowfall.

The engineer confirmed that the strength of the trusses, as designed, was adequate but set out a number of recommendations including that the truss welds and support fixings should be visually inspected and the precamber of the trusses measured. No inspection or measurements were undertaken.

As a result of the defective remedial work, the roof collapsed under snowfall in September 2010. The trust brought proceedings against the council in negligence and negligent misstatement in relation to the remedial work. The trust was successful in the High Court. The council appealed successfully to the Court of Appeal.

Reasons

The Supreme Court found unanimously that the Court of Appeal erred in distinguishing *Spencer on Byron*. The duty on councils under the Building Act 1991 springs from councils' regulatory role under that Act. The distinction that the trust was a commissioning owner that the council sought to draw was not consistent with the legislative scheme.

Nor was the attempt to draw a distinction between the issuing of a CCC and councils' other functions such as granting building consents or carrying out inspections. These functions are all directed at ensuring that buildings comply with the building code. As such, the council owed the trust a duty.

In addition, the claim based on the CCC should have been characterised as one in negligence (not negligent misstatement).

The Supreme Court found by majority that the trust was contributorily negligent for failing to have the trusses and welds inspected and the precamber measured, as recommended by its engineer. The damages award was reduced by half.

The varied results in the different courts demonstrate how finely balanced the issues were in this case and why the trust and the council proceeded with their appeals to the Court of Appeal and the Supreme Court.

In the end, both parties got something from their appeals. The trust was awarded some of its damages and the council escaped 50 percent of the damages awarded by the High Court (which amounted to approximately \$7 million). **LG**