

High Court finds settlement agreement does not cover settlement of unknown claims

In *Finnigan, Tinos Trustee Limited and Carytids Trustee Limited v Auckland Council* [2014] NZHC 1390, the High Court has found an agreement stated to be "in full and final settlement of all issues howsoever arising" did not settle claims relating to weathertightness issues which were unknown at the date of the settlement. Because the agreement related to an earlier dispute between the parties, before they had even considered that there might be leaky building problems, the defendant architect could not rely on the agreement to defeat the claim.

*Stuart Dalzell, Partner and Richard Hutchison, Solicitor explain

Background

The plaintiffs own a property on Waiheke Island. The second defendant is the architect that designed the house. In 2005 the architect sued the plaintiffs for unpaid fees. While the plaintiffs had paid the initial fee, the architect wanted more money because of additional work done. In May 2006 the parties signed a settlement agreement, which included a term recording that the agreement was in: "full and final settlement of all issues as between the parties, howsoever arising including but not limited to all allegations of negligence and breach of contract ... [the owner will pay \$14,000 to the architect]."

In 2009 the plaintiffs found that the house was a leaky building. They had repair work done and sued the Auckland Council and the architect. The architect applied to strike out and for summary judgment based on the former agreement. Essentially, the architect argued that because the prior settlement agreement with the owners was a full and final settlement of all issues, the plaintiffs' claim had no reasonable prospects of success and should be dismissed.

The meaning of the agreement

A Court's task when interpreting an agreement is to find the objective intention of the parties. Here, the question was whether a reasonable person with all the relevant background knowledge available to both parties at the time of the settlement agreement would have understood the parties to have intended to release the architect from a future unknown claim for negligent design work leading to weathertightness issues.

The Court looked at the Court of Appeal decision in *Tag Pacific Ltd v Habitat Group Ltd* (1999) 19 NZTC 15,069, where the Court discussed how to interpret settlement agreements containing a general release. In that case Tipping J stated: "...people are unlikely to intend to release a claim of which they are unaware at the time. But it is always possible for parties to do so, and such an intention will be found if clearly demonstrated by the words used...[A]n intention to release an unknown claim is not lightly to be inferred, even when apparently very general words have been used."

The architect argued that the wording of the agreement was very wide. It covered "all issues", not just the claims in the case at the time. Furthermore it covered these issues "howsoever arising", which it argued added a temporal aspect. The Court, however, declined to read the agreement in the way the architect contended. The Court noted that the architect's submission would mean, for example, that the architect could defame the plaintiffs freely without the plaintiffs being able to sue. The Court found that this was clearly absurd.

The Court looked at the context of the agreement, finding that this was a typical dispute, like those that often occur towards the end of a construction project, where a

contractor wants to get paid, and an employer wants to minimise its liability to pay. In this context, the agreement was viewed as part of the "wash-up" of the construction project, as a final settlement of what the architect would be paid for the job.

Whether the agreement applied to claims made in this proceeding

The Court noted that leaky building issues take time to show up, and require experts to determine the extent of the problems and whether there is any potential liability. Neither party had suggested that these matters could have been appreciated when the agreement was signed. Furthermore, on the architect's view, the plaintiffs were not just squaring up what they had to pay for the architect's work, but also giving up a leaky building claim of over half a million dollars. The Court found that the words used did not clearly demonstrate this intention. Therefore, the architect was unable to establish that the plaintiffs' claim had no prospects of success. It was arguable that the settlement agreement did not pre-empt the present litigation. The applications for summary judgment and strike out were dismissed.

Comment

We consider the Court was correct to dismiss the architect's application. On a literal reading of the settlement clause, it is perfectly possible to say that "all issues" means all issues including latent weathertightness claims. However, if the parties had meant to include such claims in their settlement they could easily have said so. A familiar formula that is to provide that the agreement is a "full and final settlement of all issues, whether known or unknown..." Short of that, as the Court said in *Tag Pacific*, an intention to release an unknown claim is not lightly to be inferred, even when apparently very general words have been used.