

IN THE MATTER OF
TRIBUNAL ACT 2019

CANTERBURY EARTHQUAKES INSURANCE

BETWEEN

H
Applicant

AND

EARTHQUAKE COMMISSION
First Respondent

AND

OFFSHORE MARKET PLACEMENT LTD
Second Respondent

DECISION OF C P SOMERVILLE

23 AUGUST 2019

[1] H has lodged a claim with the Tribunal concerning the damage he says was suffered by his property at xxxx, Christchurch, during the Canterbury earthquakes between 4 September 2010 and 13 June 2011.

[2] H's application to the Tribunal was accompanied by a letter to which was attached a Court of Appeal judgement dated xx xx. That Court dismissed his appeal and upheld the High Court decision rejecting his insurance claim against the first and second respondents in respect of that same property on xx. H stated costs awarded against him in both courts total about \$600,000.

[3] H stated in his application that during the 2010 and 2011 Earthquakes his property experienced: differential settlement of foundations, cracking of the interior and exterior, and damage to chimneys. He seeks \$100,000 plus GST from the first respondent and \$200,000 plus GST from the second.

[4] Although H's claim in the High Court was for a much larger sum and related to a wider range of damage than is now alleged, there were some issues in common, namely;

- (a) there was differential settlement of the foundations; and
- (b) the internal linings and external cladding were cracked.

[5] H's application has been referred to me for acceptance under section 13 of the Canterbury Earthquakes Insurance Tribunal Act 2019 (the Act), to assess whether it meets the eligibility criteria outlined in section 9 of the Act. The latter section, in turn, refers to sections 8 and 46 of the Act. No reference is made in any of those sections to section 17 of the Act, but it is implicit in the wording of that section that it must also be taken into account when the decision is made whether to accept the application.

[6] Before an application is accepted, it must meet the following criteria:

- (a) the applicant was the owner of the property at the time it was damaged by the Earthquakes in 2010/2011;¹
- (b) at that time the property was insured in the name of the applicant;²
- (c) there is a dispute between the applicant and an insurance company or EQC about a claim relating to that damage;³
- (d) at that time the building was used as a residence (if the claim is against an insurance company) or 50% of the property was used as either a residence or a rest home (if the claim is against EQC);⁴ and
- (e) one of the parties as either EQC or an insurance company.⁵

[7] Moreover, section 17 of the Act prevents the bringing of an application if the applicant:

¹ Canterbury Earthquakes Insurance Tribunal Act 2019, s 8(4).

² Sections 8(1) and (2).

³ Sections 8(1) and (2).

⁴ Sections 8(5) and (6).

⁵ Sections 8(1), (2) and 11(3).

- (a) has commenced arbitration relating to the same insurance claim; or
- (b) has commenced proceedings in the Disputes Tribunal relating to the same insurance claim and those proceedings are in progress; or
- (c) has commenced proceedings in a court and those proceedings are in progress⁶;
or
- (d) was a party to proceedings before a court or the Disputes Tribunal relating to the same insurance claim in dispute and those proceedings have been decided by the court or the Disputes Tribunal.

[8] H was a party to High Court proceedings relating to an insurance claim. Those proceedings were decided by the High Court and H's appeal against that decision has been dismissed. If his present application relates to the same insurance claim decided by the High Court, then section 17(d) of the Act prevents him from applying to the Tribunal.

[9] After examining the High Court and Court of Appeal decisions involving H, I find that the High Court proceedings and this application share the following common features:

- (a) the parties are the same;
- (b) the property is the same;
- (c) the insurance policy is the same;
- (d) the earthquakes causing the damage is the same; and
- (e) the damage is the same.

[10] I conclude that H's application to this Tribunal involves the same insurance claim decided by the High Court. Consequently, he is prevented by section 17(d) of the Act from bringing it to the Tribunal.

⁶ Although those proceedings may be transferred to the Tribunal under section 16 of the Act.

[11] The application is hereby rejected.

C P Somerville
Chair
Canterbury Earthquakes Insurance Tribunal