

UNDER the Weathertight Homes Resolution Services Act 2006

IN THE MATTER of a reconsideration of the Chief Executive's decision under section 49

**CLAIM NO. 7229: Li Qiong (Liz) Zhang –
1554A Great North Road,
Waterview**

**ELIGIBILITY DECISION OF THE CHAIR OF THE
WEATHERTIGHT HOMES TRIBUNAL**

[1] Li Qiong Zhang is the owner of a leaky home. On 26 September 2013 she filed a claim under s 14 of the Weathertight Homes Resolution Services Act 2006 (the WHRS Act) with the Ministry of Business, Innovation and Employment. However the chief executive concluded that the claim was not an eligible claim because the house was not built within the 10 years immediately before the day on which the claim was filed.

[2] Ms Zhang applies for reconsideration of the chief executive's decision under s 49 of the Act. She disagrees with the calculation the chief executive used and considers that her house was built within the 10 years immediately before the day on which the claim was brought.

[3] Both the claimants and chief executive agree that the claim was made on 26 September 2013 and that the built date is the date the code compliance certificate was issued which is 26 September 2003. The only issue that needs to be determined is whether the claim was filed within 10 years of the dwelling being built. The chief executive considered that the claim was filed one day outside the 10 year period. Ms Zhang however says her claim was filed on the last day of the 10 year period.

[4] The relevant part of s 14 reads:

14 Dwellinghouse claim

The criteria are that the claimant owns the dwellinghouse to which the claim relates; and –

- a) it was built (or alterations giving rise to the claim were made to it) before 1 January 2012 and within the period of 10 years immediately before the day on which the claim is brought;

[5] The claim was brought on 26 September 2013. The day immediately before the day on which the claim was brought is 25 September 2013. Therefore in order for the claim to be eligible the dwellinghouse must have been built within the 10 years before 25 September 2013. The relevant 10 year period within which the house must have been built therefore runs from 26 September 2003 to 25 September 2013. The CCC issued on 26 September 2003. Therefore the claim is timely because the house was built on the first day of the period of 10 years immediately before the day on which the claim was filed.

[6] It is also relevant to note that the Supreme Court in *Osborne v Auckland Council*¹ concluded that s 14(a) should be construed as operating only to exclude claims which are necessarily barred by s 393 of the Building Act. The relevant part of s 393 is:

393 Limitation defences

(2) However, civil proceedings relating to building work may not be brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based.

(3) For the purposes of subsection (2), the date of the act or omission is,

(a) in the case of civil proceedings that are brought against a territorial authority,...in relation to the issue of...a code compliance certificate under Part 2 or a determination under Part 3, the date of issue of the consent, certificate or determination as the case may be,...

[7] The effect of this section is that in order not to be limitation barred claims against a territorial authority based on the issue of a CCC must be brought within 10 years of the date of the issue of the CCC. In calculating the 10 year period consideration needs to be given to s 35(2) of the Interpretation Act 1999 which provides:

35 Time

(2) A period of time described as beginning from or after a specified day, act or event does not include that day or the day of the act or event.

¹ *Osborne v Auckland Council* [2014] 1 NZLR 766 at [24]

[8] The act or omission in this case is the issue of the CCC on 26 September 2003. One therefore excludes that date and begins to count the 10 years from 27 September 2003 which makes 26 September 2013 the final day on which a non limitation barred claim can be brought.

[9] Whether the 10 year period is calculated using the formula as set out in s 393 of the Building Act 2004 or s 14 of the WHRS Act the claim was brought on the last day of the relevant 10 year period and not one day outside that period. The claim is therefore eligible.

Conclusion

[10] I have reconsidered the chief executive's decision pursuant to s 49 of the Act and conclude that the claim is eligible as the dwellinghouse was built within the period of 10 years immediately before the day on which the claim was brought.

DATED this 31st day of October 2014

P A McConnell
Tribunal Chair