



SUMMARY

Case: Hearn & Ors v Parklane Investments Ltd & Ors – FINAL DETERMINATION

File No: TRI 2008-101-000045/ DBH 05356

Court: WHT

Adjudicator: R Pitchforth

Date of Decision: 21 September 2009

Background

In an Interim Determination dated 30 April 2009, the Tribunal held that the Wellington City Council, Mr Debney and Wadestown Developments Ltd (Wadestown) were jointly and severally liable to the claimants for the sum of \$449,807. Those parties were invited to provide particulars of their claim for contribution against the tenth respondent, Mr Nachum who declined all opportunities to take part in the Tribunal process. This determination therefore relates to those claims.

Claims for Contribution

- The Council sought a contribution from Mr Nachum on the grounds that he was in control of the building work demonstrating both an assumption of personal responsibility and negligence by omission proven to be a cause of loss. It was therefore submitted that Mr Nachum should indemnify it to the extent of 80-100%
- Both Mr Debney and Wadestown sought a contribution from Mr Nachum on the grounds that he was in total and effective control of the building

Summary of Decision

Council's claim for contribution

The Tribunal found that the building that Mr Nachum supervised was badly built, defective and leaked as it lacked engineering supervision. Mr Nachum is largely responsible for its defects. The Tribunal therefore held Mr Nachum jointly and severally liable to the claimant for the sum of \$449,807. In addition to the rights of recovery provided for in the Interim Determination, the Tribunal held that the Council was entitled to recover up to \$314,864.90 from Mr Nachum for any amount paid to the claimants in excess of \$134,942.10

Mr Debney and Wadestown Development Ltd's claim for contribution

The Tribunal found that Mr Nachum was jointly responsible for the building and accordingly should be liable for half the builder's share of the amount awarded. In addition to the rights of recovery provided for in the Interim Determination, Mr Debney and Wadestown Developments Ltd were entitled to recover up to \$157,432.45 from Mr Nachum for any amount paid to the claimants in excess of \$157,432.45. Similarly Mr Nachum is entitled to recover from Mr Debney and Wadestown up to \$157,432.45 for any amount paid to the claimants in excess of \$157,432.45

Other issues

In relation to other issues raised, the Tribunal concluded:

- There is nothing in the statute that prevents the Tribunal from dealing with disputes in stages if it is the most efficient method

- Like the courts, once judgment is delivered the Tribunal is *functus officio* and so it cannot revisit the decision. The decision in relation to the claim is completed so far as the claimants are concerned. To re-open, stay or defer the decision would be unfair to the claimants and outside the Tribunal's powers
- It is not for the Tribunal to determine whether appeals are in or out of time nor to create uncertainty by not providing a final decision on issues where appropriate

Result

- No changes were made to the orders made against the Council
- The Tribunal declined Mr Nachum's request not to consider this matter
- The Tribunal found Mr Nachum jointly and severally liable to the claimants for the amount of \$449,807
- In addition to the rights of recovery provided in the Interim Determination, Mr Debney and Wadestown are entitled to recover up to \$157,432.45 from Mr Nachum for any amount paid to the claimants in excess of \$157,432.45
- Similarly Mr Nachum is entitled to recover from Mr Debney and Wadestown up to \$157,432.45 for any amount paid to the claimants in excess of \$157,432.45