IN THE CANTERBURY EARTHQUAKES
INSURANCE TRIBUNAL CEIT—0010-2020

IN THE MATTER OF	CANTERBURY EARTHQUAKES INSURANCE TRIBUNAL ACT 2019
BETWEEN	G Applicant
AND	EQC First Respondent
AND	SR Second Respondent (Discontinued)

Date: 20 November 2020

On the papers

DECISION OF MEMBER C D BOYS (NO 2)

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[1] On 11 November 2020, I issued a decision on several of the substantive issues between the parties to this application (the decision). On 19 November 2020, G made an application for the recall of the decision (the recall application).

[2] In the recall application G raises several grounds for recalling the decision, including:

(a) the way I have addressed the expert evidence and the expert witnesses' qualifications;

(b) disagreements with various factual findings;

(c) the failure to address a live issue - G's request for an award of interest; and

(d) an allegation that I did not write the decision, instead surmising that it was authored by Chair Somerville.

[3] G has also put forward evidence, not previously before me; information obtained by Mr Cowie from EQC regarding the observational data used by EQC to assess the accuracy of the Lidar surveys upon which it has relied.

THE LAW

[4] The recall of a decision is a serious step and is not appropriate where a party disagrees with a decision or considers that the decision-maker has drawn the wrong conclusions from the evidence. Subject to appeal, it is important that decisions provide finality, otherwise disputes could never be concluded.

[5] Section 47(2) of the Canterbury Earthquakes Insurance Tribunal Act 2019 (the Act) states:

After a copy of a decision is given to the parties, the Tribunal may correct any minor clerical or typographical errors or errors of a similar nature.

[6] The leading case on the recall of decisions is that of Wild CJ in *Horowhenua County v Nash (No 2)* where he stated[1]:

> Generally speaking, a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories of cases in which a judgment not perfected may be recalled — first, where since the hearing there has been an amendment to a relevant statute or regulation

[1] *Horowhenua County v Nash* (No 2) '[1968] NZLR 632 (SC) at 633.

> or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[7] In *Evans v IAG & Ors*[2] Churchman J considered Wild CJ's third category of cases and concluded[3]:

> From these various comments, I discern that, in order to justify a recall, an error or mistake on the part of the Judge must be a material one and one which is central to the disposition of the case.

CONCLUSION

[8] Having considered the recall application I observe that most grounds for recall relate to my assessment of the evidence, the weighting I have given to the expert evidence, and my analysis of that evidence. These are not legitimate grounds for recall. Moreover, if I have made errors of fact in summarising that evidence, which I do not believe I have, these are not material errors which are central to the disposition of the case. Accordingly, I decline those grounds for recall summarised at [2] (a) and (b) above.

[9] G argues that the decision should be recalled because the decision did not consider her request for interest to be paid. It is correct that I did not consider this point. However, this is not a reason for which the decision should be recalled. Section 48 of the Act allows the Tribunal to make an award of interest on all, or part, of any money awarded. Interest is to be calculated by one of two methods; either under the insurance policy (should the policy provide for the payment of interest), or in accordance with schedule two of the Interest On Money Claims Act 2016.

[10] In her application G has sought awards for:

(a) unresolved earthquake damage to her home;

(b) unresolved IFV damage to her land;

(c) general damages; and

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[2] *Evans v IAG* [2020] NZ HC 1466

[3] *Evans v IAG* [2020] NZ HC 1466, at [21]

(d) the remediation of defective repairs.

[11] The dispute over unresolved earthquake damage to the home was resolved by a negotiated settlement between G and the Respondents prior to the decision. This was not a live dispute before me. As no award for payment could be made, no interest could be awarded.

[12] In the decision I conclude that G's land had not suffered IFV damage, and that general damages were not appropriate. Therefore, no award was made, and no interest could be awarded.

[13] The only live issue where an award of money remains possible is regarding the cost to remediate defective repairs. I did not reach a conclusion on this issue for the reasons set out at paragraph [6] of the decision. Should this come before me I will consider whether interest is appropriate.

[14] The allegation that Chair Somerville was involved in the drafting of my decision is incorrect. The metadata of the document references Chair Somerville simply because he created the word template for the entituling on which I drafted both the decision, and this current draft. The allegation is not made out nor is it a relevant ground for recall.

[15] The fresh evidence consists of a document sent to Mr Cowie and timestamped "5 September 2016." It was open to him to provide this evidence with his submissions. He chose not to do so. This is not a legitimate ground for recall.

C D Boys
Member
Canterbury Earthquakes Insurance Tribunal