

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA555/2021  
[2023] NZCA 365**

BETWEEN TRACEY JANE CRIDGE AND  
MARK ANTHONY UNWIN  
Appellants

AND STUDORP LIMITED  
Respondent

**CA555/2021**

BETWEEN KATRINA MCKELLAR FOWLER AND  
SCOTT WOODHEAD  
Appellants

AND STUDORP LIMITED  
First Respondent

AND JAMES HARDIE NEW ZEALAND  
LIMITED  
Second Respondent

Hearing: 27 June 2023

Court: French, Brown and Gilbert JJ

Counsel: J A Farmer KC, E S K Dalzell,  
J T Wollerman and D A Fry for Appellants  
J E Hodder KC, E S Scorgie and S R Roberts for Respondents

Judgment: 14 August 2023 at 2.30 pm

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**JUDGMENT OF THE COURT  
(Re application to adduce further evidence)**

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- A The appellants' application to adduce further evidence is declined.**
- B Costs relating to the application are reserved until final disposition of the substantive appeal.**
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## REASONS OF THE COURT

(Given by French J)

[1] On the penultimate day of the nine day hearing in August last year, the appellants filed an application to adduce further evidence.

[2] The application comprised:

- (a) A request to re-visit an application that had been made but rejected in the High Court to have one of the respondents' expert witnesses recalled for further cross-examination; and
- (b) a new application to adduce further evidence from their own experts for the purposes of the appeal.

[3] All of the proposed further evidence relates to what were called the Allunga Tully documents.

[4] We have decided to decline the application. The reasons will be detailed in the judgment that addresses the substantive appeal. However, the key reasons can now be briefly stated as follows:

- (a) The proposed evidence from the appellants' experts is not fresh. After the Allunga Tully documents had come into their possession, the appellants made a deliberate decision not to adduce that evidence, despite the trial judge expressly raising that possibility before delivering his judgment.
- (b) The delay in making the application. The application to adduce further evidence from their own experts was made over a year after the Allunga Tully documents first came into the appellants' possession, and near the end of a nine day appeal hearing during which they had earlier submitted it would be "hard to discern in terms of the essence of the case" what the witnesses in question would add.

- (c) The proposed evidence from the appellants' own experts is not sufficiently cogent in that it lacks the required specificity.
- (d) Although we consider the Allunga Tully documents were discoverable once they came into the respondents' possession sometime around April 2021, there had not been a breach of its discovery obligations up until that point.
- (e) We are not persuaded the Judge was wrong to decline the application to recall the respondents' witness.

[5] As regards the costs of the application, we have decided to reserve these until final disposition of the substantive appeal.

Solicitors:  
Dalzell Wollerman, Wellington for Appellants  
Chapman Tripp, Auckland for Respondents