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Long-stop period clarified

Claims against faulty building work need to be brought within a 10-year long-stop period. Recent court cases have clarified how this defence applies to design work and product manufacturers and suppliers.

Stadium Southland rebuild.

PHOTO – SNPA/DIANNE MANSON

WHILE THE LIMITATION provisions of the Building Act can provide an absolute defence, the 10-year long-stop period in section 393 of the Building Act 2004 only applies 'in relation to building work'.

What's 'building work' and what's not?

If a defendant believes a claim is statute barred due to the 10-year long-stop period, they will usually apply to strike out all or part of a plaintiff's claim against them. Some recent cases have explored what is, and is not, 'building work'.

In September 2010, Stadium Southland's roof collapsed after a heavy snowstorm. The building owners, the Southland Indoor Leisure Centre Charitable Trust, issued proceedings against the Invercargill City Council and a consulting engineer. The Council joined a second firm of consulting engineers who had carried out peer-review work of the original design and some further redesign work.

Building work includes design work

That second firm of consulting engineers and their employees sought to strike out the causes of action against them, relying in part on section 393. They argued that their work carrying out a structural review and producing a design review letter was building work as 'design work'. They also argued that as this work was done more than 10 years before the proceedings against them commenced, the claim was statute barred.

The High Court agreed with their position. 'Building work' in the 2004 Act did include 'design work'.

Has to be for a specific building

The Court noted 'building work' is defined to mean work 'for, or in connection with, the construction, alteration, demolition, or removal of a building'. Further, the Act defines 'construct' as including 'to design, build, erect, prefabricate, and relocate the building'.

The High Court emphasised that, in each case, what is 'building work' is a fact-specific inquiry. However, where design work is specific to a particular building, it is likely to be building work. If consultancy

services are not directed at a particular building, however, the outcome may be different.

In another High Court decision, a party who carried out geotechnical reports on earthworks for a subdivision was not able to rely on the definition of 'building work'. In that example, the reporting was not for or in '… connection, with the construction, alteration, demolition or removal of a particular building'.

As a postscript, the Charitable Trust recently succeeded in its claim against the Council.

10-year long-stop period not for products

In July this year, the Court of Appeal released its decision on a strike-out application by Carter Holt Harvey Limited against plaintiffs that included the Ministry of Education. The Ministry is arguing that a product supplied by CHH is defective and has damaged numerous New Zealand schools.

CHH appealed the High Court's refusal to strike out a number of the Ministry's causes of action against it. It was only successful in one of its arguments.

An argument that did not succeed was that all of the Ministry's claims should be struck out because the 10-year long-stop period applied.

The Court of Appeal said it was satisfied that the 10-year long-stop period was not intended to apply to building products, manufacturers and suppliers.

There was no necessary relationship between the alleged negligent manufacture of the product and the building work. The only relevance was incidental in that the cladding sheeting would, in due course, be used in the building work. This did not mean that every claim in respect of the defective cladding sheeting related to building work, however.

Act doesn't apply to manufacturers and suppliers

The Court of Appeal did not consider that it was arbitrary and unfair for product manufacturers and suppliers to be treated differently from other parties responsible for building work under the Act.

Rather, it said, this was consistent with the intent of the Act, which only applied to parties such as owners, designers, builders and building consent authorities and did not apply to manufacturers and suppliers of products.

This was, at least, the case before November 2013 when amendments to the Act did place some obligations on product manufacturers and suppliers.

Note This article is not intended as legal advice. For further information, please contact the Harkness Henry Building and Construction team on (07) 838 2399 or email build@harkness.co.nz.