

Case in Brief

BNZ Branch Properties Ltd v Wellington City Council [2021] NZHC 1058

The Building Act “10-year time-bar” provisions: the longstop may no longer prevent a longdrop for negligent third parties

By Maria Cole

In *BNZ Branch Properties Limited v Wellington City Council*,¹ the High Court ruled that a contribution claim by a defendant against third party engineers was not time-barred by the 10-year longstop period in the Building Act 2004.

The facts

In February 2011, BNZ leased land in Wellington from CentrePort to construct a building for its operations. In November 2016, the building suffered irreparable damage as a result of the Kaikoura earthquake.

In August 2019, BNZ filed proceedings against the Council seeking damages of *no less than* \$101,243,345.00. It alleged the Council was negligent in granting the building consent application, in its inspection of the building work and in issuing a code compliance certificate.

¹ [2021] NZHC 1058.

Claim for third party contribution

In September 2019, the Council filed third party proceedings against the structural engineers (Beca) for the design of the building and another engineer engaged by Beca to peer review the design. The Council was seeking to recover contribution from Beca in accordance with section 17 of the Law Reform Act 1936.

Beca applied to strike out the Council's claim or for an order for summary judgment. It argued that the Council's proceedings were out of time. Beca said that it had finished providing its engineering services by March 2008 and the Council did not file its third party claim against Beca until September 2019. This meant the claim was time-barred.

Beca was specifically relying on the limitation defence under section 393(2) of the Building Act – (the **longstop period**). The longstop period provides that relief may not be granted in civil proceedings relating to building work if they are brought 10 years or more from the date of the act or omission on which the proceedings are based.

High Court decision

The Court had to decide whether the longstop period under the Building Act applied to third party claims for contribution under the Law Reform Act. In reviewing a line of authorities on the longstop period, the Court found the position was not clear in relation to claims for contribution.

It reviewed in detail the history of the legislation providing rights to claim contribution and limitation statutes. It looked at the relationship between the Building Act, the Law Reform Act and the two-year longstop contained in section 34 of the Limitation Act 2010.

The conclusion reached was that the “civil proceedings” caught by the Building Act longstop period relate to primary claims between a plaintiff and a defendant and do not include claims for





contribution. The Court found that the specific two-year longstop of the Limitation Act applied to contribution claims and that the Building Act's 10-year longstop period did not override it. The Court dismissed the application, and the Council's claim against Beca continues.

Conclusion

This decision is significant for building owners and parties who are involved at a later stage of the construction process. For councils, which are often the ship of last resort with deep pockets to pay the ferryman, it will provide relief. It means when faced with litigation over building and construction defects they can now seek contribution from a negligent third party even if the third party's actions were outside the 10-year longstop period.

ABOUT THE AUTHOR



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She was previously a civil litigation barrister for over a decade, where she gained experience in arbitration and mediation

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