



HIGH COURT OF AUSTRALIA

8 August 2023

ZURICH INSURANCE COMPANY LTD & ANOR v KOPER & ANOR
[2023] HCA 25

Today, the High Court unanimously dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales concerning the application of the *Trans-Tasman Proceedings Act 2010* (Cth) ("the TTPA") to proceedings in State jurisdiction. The TTPA implements a bilateral agreement relating to trans-Tasman court proceedings. Section 9 of the TTPA permits an initiating document issued by an Australian court that relates to a civil proceeding in that court to be served in New Zealand, without the need for the court to give leave or be satisfied of any connection between the proceedings and Australia. Section 10 of the TTPA provides that service of an initiating document in New Zealand under s 9 has the same effect, and gives rise to the same proceeding, as if the document had been served in the place of issue.

The first respondent, Mr Koper, is the registered proprietor of a residential unit in a block of apartments in Auckland, New Zealand, that was designed and constructed by Brookfield Multiplex Constructions (NZ) Ltd ("BMX NZ"). Mr Koper, as representative of other registered proprietors of units within the apartment block, had obtained judgment against BMX NZ in the High Court of New Zealand in respect of defective design and construction of the building. Mr Koper thereafter, and again as representative of other registered proprietors of units within the apartment block, brought proceedings in the Supreme Court of New South Wales against the appellants, who were insurers of BMX NZ, seeking leave to bring substantive proceedings against them under s 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) ("the Claims Act").

Section 4 of the Claims Act entitles a claimant who has a contractual claim against an insured person to bring proceedings in a New South Wales court to recover from that person's insurer the amount of any indemnity payable by the insurer pursuant to a contract of insurance. Because of the manner in which the primary judge had interpreted s 4 (which was not subject to challenge on the appeal), the appeal was argued on the basis that Mr Koper's entitlement to bring proceedings against the appellants before the Supreme Court of New South Wales depended on whether the claims against BMX NZ in the High Court of New Zealand were capable of being brought in the Supreme Court. Whether those notional proceedings could have been brought depended, in turn, on whether BMX NZ could have been served with an originating process issued by the Supreme Court of New South Wales and whether such service would have been effective by operation of ss 9 and 10 of the TTPA.

The High Court rejected the appellants' argument that ss 9 and 10 of the TTPA could not validly apply to an initiating document issued by the Supreme Court that relates to a civil proceeding in a matter in State jurisdiction. Four Justices held that, subject to the *Constitution*, the service of process in proceedings involving the exercise of jurisdiction by a State court is within the legislative power of the Commonwealth Parliament under s 51(xxiv) of the *Constitution*, regardless of whether the jurisdiction to be exercised by the State court is federal jurisdiction or State jurisdiction.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*