IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2016-409-001182
[2018] NZHC 1464

BETWEEN	SUZANNE ROBIN Plaintiff
AND	IAG NEW ZEALAND LIMITED First Defendant
	CANTERBURY RECONSTRUCTION LIMITED (now in liquidation) Second Defendant
	ORANGE H MANAGEMENT LIMITED (FORMERLY HAWKINS MANAGEMENT LIMITED) First Third Party
	ORANGE H GROUP LIMITED (FORMERLY HAWKINS GROUP LIMITED) Second Third Party

Hearing:	23 May 2018
Appearances:	KJM Robinson and N R Musesengwa-Gwaze for Plaintiff N S Gedye QC and E A Boshier for First Defendant No Appearance for Second Defendant, First Third Party or Second Third Party
Judgment:	19 June 2018

JUDGMENT OF GENDALL J

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[1] On 21 February 2018, Associate Judge Matthews dismissed an application by the first defendant, IAG New Zealand Ltd (IAG), to add four parties as defendants to

this proceeding under r 4.56 High Court Rules 2016.[1] IAG has applied to have this decision reviewed under r 2.3.

Background facts

[2] The plaintiff (Ms Robin), purchased a residential property at 214 Fitzgerald Avenue, Christchurch (the house), in December 2014. The previous owners, Creole Investments Ltd (Creole), owned the property at the time of the Christchurch earthquakes in late 2010 and early 2011. Creole had an insurance policy with (IAG). Creole assigned its rights under that policy to Ms Robin when she purchased the property.

[3] After the earthquakes, Creole made a claim under the policy. Creole elected to repair the house, thus obligating IAG to pay "the cost of restoring it to a condition as nearly as possible equal to its condition when new". IAG appointed Hawkins Management Ltd (Hawkins) as it then was to act on its behalf in assessing the scope of works required to effect repairs and to monitor the repair work undertaken. Hawkins appointed the second defendant, Canterbury Reconstruction Ltd (CRL), to carry out repairs to the house. Creole and CRL signed a contract to govern the repairs to the property.

[4] Ms Robin argues that the repairs to the house have not been carried out to the standard required by the IAG policy. She seeks an order that IAG specifically perform its duties pursuant to the policy by paying the costs to remediate the defective repairs, or, alternatively, pay damages in the amount required to repair the house to a good standard of workmanship with all earthquake damage properly repaired.

[5] Ms Robin also sues CRL (being the party appointed by Hawkins to carry out and manage the house repairs) in the tort of negligence, contending that CRL breached the duty of care it owed to her to ensure that those repairs were carried out to a good standard of workmanship with all earthquake damage properly repaired.

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1 *Robin v IAG New Zealand Ltd* [2018] NZHC 204.

[6] IAG joined Hawkins, now known as Orange H Management Ltd (OHML), as first third party, pleading that, if Ms Robin's contentions are established, OHML failed in certain duties to IAG under the written contract that existed between them. IAG also joined Orange H Group Ltd (OHGL), formerly Hawkins Group Ltd, as second third party in respect of certain duties OHGL owes under that contract.

[7] Originally IAG had applied for an order that, four new parties be added to this proceeding as defendants. This was on the basis that each of these parties was involved to an extent in work carried out on the house, and each owed Ms Robin duties of care. As a result, responsibility lies with them if the work on the property is not up to standard. The first party was OHML.[2] The second and third parties carried out work on the house under subcontracts with CRL. One of these is Houselifters Ltd (Houselifters) which carried out the foundation work. The other is Max Contracts Ltd (Max) which carried out other building work. The last of the four parties is the Christchurch City Council (the Council). It issued a code compliance certificate certifying that work on the house complied with the relevant building consent.

[8] Ms Robin opposed this application. She argued that the presence of the parties remaining, Houselifters, Max and the Council (the proposed defendants) as defendants is not necessary to adjudicate upon or settle any of the questions raised in her case.

Associate Judge's decision

[9] In his decision, Associate Judge Matthews followed the approach to r 4.56 set out by Rodney Hansen J in *Fonterra Co-Operative Group Ltd v Waikato Coldstorage Ltd*,[3] and the Court of Appeal in *Newhaven Waldorf Management Ltd v Allen*.[4] Generally, there is no criticism of his adoption of these legal principles.

[10] The Associate Judge found that, in the circumstances, Ms Robin could have sued each of the proposed defendants alleging breaches of a duty of care to her.

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2 IAG, however, has advised that it no longer seeks an order that OHML be joined as a defendant. The application proceeds therefore on the basis that it now seeks orders relating only to the other three parties.

3 *Fonterra Co-Operative Group Ltd v Waikato Coldstorage Ltd* HC Hamilton CIV-2010-419-855, 22 December 2010.

4 *Newhaven Waldorf Management Ltd v Allen* [2015] NZCA 204, [2015] NZAR 1173

Therefore, the proposed defendants were able to be joined. He also accepted that it was arguable that the presence of each of the proposed defendants before the Court may be necessary to adjudicate on and settle all questions involved in the proceeding. The Associate Judge then moved on to consider whether it was in the interests of justice to join them. He noted that he had to look at the nature of the impact of the proceeding on the rights of each of the proposed defendants.

[11] Associate Judge Matthews considered that findings of fact in the case may impact on the rights of each of the proposed defendants because the quality of workmanship on the house is called into question. He found that this meant the test in *Newhaven* was met. However, he did not consider that this required joinder because he found there was another pathway by which Max and Houselifters could be brought before the Court as third parties. This would protect their interests.

[12] It was noted in the Associate Judge's decision that Ms Robin's first cause of action is for breach of contract against IAG in relation to its obligations under the policy over the damaged house. He considered that, arguably, the particulars pleaded in relation to IAG should be particulars of how the finished product is not a satisfactory response to IAG's contractual obligation in the policy, rather than a summary of how the repairs were done. He said that it was Ms Robin's right to receive the house in a repaired condition and IAG's obligation to ensure that appropriate steps were taken to bring this about.

[13] Associate Judge Matthews set out what he saw as the proper pathway here, which was that the proposed defendants (excluding the Council) should be joined sequentially, based upon their contractual relations. He considered that the scenario where IAG would want to issue tort proceedings against the proposed defendants in Ms Robin's name, should it be found liable to her, was unlikely. Instead, he predicted that there would be a sequential joinder of parties down the contractual chain after his judgment was released. In that situation, IAG would be able to pass any possible damages liability it was found to have down the chain to the parties responsible.

[14] Associate Judge Matthews found that Ms Robin did not have the information required to competently plead and present to the Court a case in tort against the

proposed defendants. She does not know the terms of any of the engagements, what instructions were given, or what occurred on the site, having only professional reports on the condition of her house. The Associate Judge contrasted this with the information held by the other parties about those they had contracted with. Furthermore, he noted that Ms Robin would have the onus of establishing that a duty of care was owed to her, which he suggested was not a straightforward exercise.

[15] The Associate Judge did not think that IAG could be accurately described here as "an intermediary". Rather it was a contracting party with clear written obligations under the policy. It had the responsibility of ensuring the property was properly repaired. He considered that it could not be suggested as a matter of principle that, when repair work is inadequate for one reason or another, the insured should not just turn to their insurer but must also turn to those who did the repairs.

[16] Lastly, the Associate Judge considered that the interests of justice here were served by Ms Robin suing IAG and IAG passing on liability down the contractual chain. If IAG could not do so, it was simply left with its primary responsibility to its insured. This would not be unfair to IAG, he suggested, because it chose to set up the response mechanism in the way it did. The Associate Judge found that the impact on the proposed defendants (except the Council) of findings in relation to the work they carried out on the house would be properly and fully aired in terms of their contractual obligations if they were present as third parties.

[17] Therefore, the Associate Judge found that it was not necessary or in the interest of justice that Houselifters or Max be joined as defendants.

[18] With regard to the Council, the Associate Judge assumed that Ms Robin could sue it in tort. He thought it unlikely that, if found liable to Ms Robin, IAG would need to sue the Council by way of subrogation to recoup its loss. If the work was not code compliant, the contractor responsible would be liable to OHML, and OHML to IAG. If the work was code compliant but still substandard for an unrelated reason, the Council would not be liable anyway.

[19] The Associate Judge concluded that the proceeding did not impact on the Council's rights, and it was not in the interest of justice for the Council to be joined as a defendant.

Legal principles of review

[20] A review against an Associate Judge's decision proceeds pursuant to r 2.3 High Court Rules. That rule relevantly provides:

> (4) If the order or decision being reviewed was made following a defended hearing and is supported by documented reasons,—
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> (a) the review proceeds as a rehearing; and
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> (b) the Judge may, if he or she thinks it is in the interests of justice, rehear the whole or part of the evidence or receive further evidence.

[21] In *Puredepth Ltd v NCP Trading Ltd,* the Court of Appeal held that an appeal against a decision under r 4.56 is an appeal against the exercise of a discretion.[5] While the Court of Appeal later criticised this finding in *Newhaven Waldorf Management Ltd v Allen,* it declined to overrule it.[6] Therefore, the approach in *Puredepth* is still binding on this Court.

[22] To succeed on its present review application, IAG must show that the Associate Judge acted on a wrong principle, failed to take into account some relevant matter or took into account some irrelevant matter, or was plainly wrong.[7] This Court may also interfere with the exercise of the Associate Judge's decision where there has been a material change of circumstance.[8] In light of such a change, the decision may now be plainly wrong.

Preliminary comments regarding IAG's contingent subrogation rights

[23] IAG's key motivation in having the proposed defendants joined is to ensure that, if IAG is found to be liable to Ms Robin, it would obtain subrogation rights that

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5 *Puredepth Ltd v NCP Trading Ltd* [2010] NZCA 392 at [16].
6 *Newhaven Waldorf Management Ltd v Allen*, above n 4, at [53] – [54].
7 *Shirley v Wairarapa District Health Board* [2006] NZSC 63, [2006] 3 NZLR 523 at [15]; *Robinson v Whangarei Heads Enterprises Ltd* [2013] NZHC 2247 at [7].
8 *Haines v Herd* [2016] NZHC 1928 at [3].

would enable it to pursue her claim against those proposed defendants. It can only affect these rights if the liabilities of the proposed defendants to Ms Robin have been determined. Failing to accommodate the possible subrogation rights now would result in IAG, if found liable, having to initiate a subsequent trial dealing with essentially the same matters. This is an outcome r 4.56 is designed to prevent.

[24] Submissions were advanced for Ms Robin, however, noting that, no rights of subrogation arise until or unless IAG is obliged to make payment under the policy. IAG maintained in response, however, that this should not be an impediment to joinder. I agree. In my view, this case is no different from a guarantee or indemnity case in that respect, so this does not prevent joinder.

Further preliminary comment

[25] In her amended statement of claim described as her "Second Cause of Action", Ms Robin sues CRL, as the second defendant, in negligence. As noted at [5] above, she pleads that CRL breached a duty of care owed to her to ensure that the repairs to the house were carried out to a good standard of workmanship so that all earthquake damage was properly repaired. CRL was the company appointed by Hawkins /OHML to carry out and manage the house repairs. Therefore, I consider that it must follow necessarily that the subcontractors or co-contractors Max and Houselifters, as the builder and foundation specialist respectively, arguably breached such a duty too. They were the parties that actually carried out the work to the house, while CRL managed the project. Therefore, Max and Houselifters clearly should be joined as defendants. I had few submissions on this point directly from IAG but I need to say at the outset that I consider that it goes a considerable way to answering the question as to whether or not they should be joined as defendants in the affirmative.

[26] I am reinforced in this view, as I see it, by comments in *McGechan on Procedure*, relating to defendants seeking joinder of other defendants in situations similar to the present. It is stated there:[9]

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9 *McGechan on Procedure* (Thomson Reuters online, loose-leaf ed) at [HR 4.56.12].

> **HR4.56.12 Defendants seeking joinder**
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> The current approach where defendants seek joinder is to treat any opposition by the plaintiff as a factor to be considered, but not a bar to joinder. …
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> An exception appears to exist in cases where the plaintiff sues one of a number of co-contractors. In such cases, the Court will generally exercise a discretion in favour of joining the remaining co-contractors as defendants, even though third party proceedings would be possible.

[27] Nonetheless, as IAG has applied for review of the Associate Judge's decision on other grounds advanced before me in some detail, I will proceed by fully considering those grounds as well.

Review ground 1 – an assumption only is required, not a determination

[28] Under this ground, IAG contended that the Associate Judge erred in making findings on the merits of Ms Robin's claim, which he then used to determine the application. He needed only to assume that her case was provable. At various points, he treated IAG's policy obligation as being to physically reinstate the house, rather than paying money to the policy holder to indemnify costs it incurred to repair it. IAG contends that the policy obligated the latter, so its obligations are limited to the reasonable costs incurred by the policy holder to reinstate. Crucially, this does not include paying for the builder's negligence in the course of otherwise indemnified work.

[29] Ms Robin disputes this and claims that IAG is obligated to pay the cost to remediate the defective repairs. She argues that if a repair is attempted, but the house is not restored to the policy standard, IAG has not fulfilled its obligation. Thus, IAG is in breach of the policy. The policy does not limit the cost to restore to that which is reasonable. She maintains that IAG has a duty to restore the house to the policy standard. The presence of the proposed defendants is unnecessary to settle this essential question.

[30] In my view, this is clearly a key substantive issue for trial that will require detailed argument. It would be inappropriate for a judge to purport to determine it in considering an interlocutory application to join defendants. The multiple references by the Associate Judge to IAG's responsibility, as I see the position, do indicate that

he was of the view that IAG was obligated to reinstate the house itself. In my judgment, the Associate Judge erred in making that determination at this stage of the proceeding. IAG submitted that the Associate Judge's determination to the contrary coloured his assessment of the overall merits and drove him to the result he preferred.

[31] I accept the argument that the Associate Judge's view of IAG's liability may have led him to consider that IAG had overall responsibility for the faulty repair work. He stated that IAG had an obligation to repair the house which it effected through the other parties.[10] Associate Judge Matthews found that if IAG could not pass liability down the contractual chain, then that was its own fault for setting up the response mechanism to Creole's claim that it did.[11] This conclusion was based on a finding of the content of IAG's liability under the contract which, as I see it, should not have been determined until trial. It was inappropriate for the Associate Judge's decision to be influenced by a premature determination of this issue. The Associate Judge erred by taking an irrelevant factor into his consideration of the question whether the proposed defendants should be joined.

Review ground 2 – misidentified liability pathways

[32] In this ground, IAG contended that the Associate Judge wrongly assumed that joinder of the proposed defendants as third parties by CRL would resolve the issues in the application. It argued he was in error in arriving at this point in a number of ways. First, he misidentified the nature and extent of the relationships and the potential liability pathways between other participants in the building repair exercise. Secondly, he failed to allow for the effective pursuit of IAG's subrogation rights, which require the liabilities of Max, Houselifters and the Council to Ms Robin to be determined. And, thirdly, he unjustifiably assumed that CRL would join the proposed defendants as third parties.

[33] IAG submitted that it needs to have the ability to exercise Ms Robin's rights of claim against the proposed defendants as it has neither contractual relationships with them nor tortious duties owed from them. Therefore, it cannot pursue a claim against

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10 At [30].
11 At [32].

them in its own name. IAG suggested that the Associate Judge failed to identify or properly consider this factor. It argued that it is not appropriate, at this preliminary stage, for the Court to predetermine questions as to who may be liable to whom or to limit possible liability pathways.

[34] IAG said, too, that the Associate Judge was wrong to find that it was not in the interests of justice for Ms Robin to claim against the building contractors, who actually did the work, and the Council. It maintained that his reasoning about the contractual chain of liability, whereby IAG could recover from OHML and OHML from others down the chain, was erroneous. As I understand the position, OHML resolutely disputes liability to IAG and Ms Robin. Assuming that OHML would be found fully liable to IAG at trial, in the face of OHML's defences, was not appropriate. IAG also has no certainty of successful enforcement against OHML or its guarantor OHGL, both of which are now in receivership.

[35] In response, Ms Robin contended that IAG has no right of subrogation in these circumstances because the damage to the house was caused by the earthquakes. There is no third party that caused the loss. Therefore, the proposed defendants' presence is not necessary to settle the questions involved in this proceeding.

[36] Counsel for Ms Robin went on to submit that, if she pursued and was successful against all the proposed defendants, it would not necessarily put her in the position she is entitled to be under the terms of the policy with IAG. She argued that an obligation to indemnify under an insurance policy is markedly different from a contractual or tortious duty to exercise reasonable care and skill in effecting a repair.

[37] Ms Robin suggested that the repairers themselves were not necessarily negligent or their work defective and noted she is suing IAG rather than pursuing those repairers. However, that is not her entire case. She is also suing CRL in tort for breaching its duty of care to carry out the repair of the house to a good standard of workmanship so that all earthquake damage was properly repaired. While IAG's obligation under the policy standard is fundamentally different from the tortious obligations owed by the proposed defendants, those obligations are similar to the

tortious obligations CRL owes Ms Robin. Ms Robin's submissions overlook this important point.

[38] On this aspect, it is interesting to note the Associate Judge's comments at [25] where he stated:

> On the face of it though, there appears to be a chain of contractual obligations running from OHML through CRL to Houselifters Ltd and Max Contracts Ltd which, as I understand it, contracted with CRL. All could be joined sequentially. By that means all parties save the Council would be before the Court with the obligations of each, and their compliance with those obligations, being issues for determination. The presence of all parties who carried out relevant work on the house would be before the Court. It is necessary to consider, therefore, whether instead of all this, and contrary to her wishes, Ms Robin should be obliged to bring all or any of these parties before the Court by causes of action in tort.

[39] This paragraph indicates that Associate Judge Matthews was of the view that the proposed defendants should be before the Court but that he thought the most appropriate way would be by having them sequentially joined down the contractual chain, starting with CRL. The Associate Judge considered that it was unlikely that IAG would need (by subrogation) to sue the proposed defendants in tort because liability could be passed down the contractual chain to the party or parties responsible. However, as I discuss under review ground four following, this is not likely to happen now. The affidavit of Ms Thompson before the Court also indicates that CRL was not intending to join any of the proposed defendants.

[40] I agree with the submissions advanced to me by counsel for IAG that the Associate Judge made an incorrect assumption here, which he then relied upon in reaching his decision. In light of what seems to be the impossibility of the proposed defendants being joined by CRL, the decision is plainly wrong given particularly, as the Associate Judge found, these parties should be before the Court. Moreover, the Associate Judge's decision was perhaps influenced too by his finding that any inability of IAG to pass liability down the contractual chain was largely its own fault. The Associate Judge improperly limited the liability pathways based on what it seems may have been his premature decision regarding IAG's liability.

Review ground 3 – minimal cost and inconvenience

[41] Under this ground, IAG submitted that the Associate Judge was wrong to assume that the case against the proposed defendants goes substantially beyond the case already pleaded by Ms Robin. As a result, he was wrong to conclude that joining the proposed defendants would put Ms Robin to undue cost and inconvenience to prove that. IAG argued it would not and, in any event, costs would be compensable.

[42] IAG suggested that Ms Robin has already pleaded claims which require her to prove the defective workmanship details. If she succeeds on these facts against IAG and CRL, then IAG says it is highly likely that she will succeed on the facts against CRL's co-contractors or sub-contractors, Max and Houselifters. The legal basis for these claims is well-settled. IAG argued that the key facts necessary to give rise to a case against the Council too will also be traversed by Ms Robin's existing case.

[43] The extra burden to Ms Robin, according to IAG, needs to be weighed against the detriments of risking a second trial later. IAG argued that Ms Robin's concerns about costs can also be alleviated by reference to the Court's wide discretion on costs. If Ms Robin is unsuccessful against the proposed defendants, the Court could ensure a just result by not holding her liable for the costs of the defendants joined by IAG.

[44] IAG submitted, too, that the Associate Judge erred in giving weight to Ms Robin's protest where she claimed that she did not have the evidence to proceed against the proposed defendants. Two substantial experts' reports have been obtained by Ms Robin. IAG says they are equally sufficient to show proof of defective workmanship against Max and Houselifters as they are to provide similar proof against CRL.

[45] Ms Robin replied that she is not in a position to join any of the proposed defendants as she has no contractual relationship with them and contends she has no knowledge of the work they were contracted to perform. She argued that she would have to rely on IAG to plead her case, and that hearing the issues and evidence in relation to the proposed defendants would prolong the proceeding and cause her additional costs. The balance of convenience, she said, clearly favours the fact that it is IAG, rather than her, who should bring a claim against the proposed defendants.

[46] While the joining of the proposed defendants will inevitably cause some adverse effects to Ms Robin, in my judgment, this does not outweigh the benefit of having all necessary parties before the Court and preventing the need for a possible second trial later. The majority of the evidence Ms Robin will require to prove a breach of the duty of care by Max and Houselifters would be the same as that required for her present claim against CRL. Therefore, this is not a factor that prevents joinder of those two entities as defendants here.

[47] Ms Robin's case against the Council would be on slightly different grounds than CRL as it would require evidence regarding the code compliance certificates. Nonetheless, I consider that evidence would still be relatively easy for Ms Robin to obtain and much of the necessary evidence would overlap that used against CRL. Therefore, I consider that this would not prevent the joinder of the Council as a defendant either.

Review ground 4 – material change in circumstances

[48] Under this ground, IAG argued that there has been a material change in circumstances since the 30 January 2018 hearing before Associate Judge Matthews. CRL went into liquidation on or about 19 April 2018. That liquidation effectively gives rise to a stay of this proceeding against CRL unless the liquidator agrees for the proceeding to continue or the court orders otherwise.[12] Therefore, the Associate Judge's assumption that CRL, as second defendant here, would join the proposed defendants as third parties was, in all probability, superseded by CRL's liquidation. Moreover, prior to its liquidation, CRL had indicated it did not wish to join any third parties.

[49] OHML and OHGL, as I have noted above, also went into receivership, this occurring on 11 May 2018. IAG suggested that it is reasonable to assume they have solvency issues. It must be concerning, therefore, that three of the six potential "defendant" parties are in liquidation or receivership.

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12 Section 248(1)(c)(i) of the Companies Act 1993.

[50] Ms Robin argued that there has been no change sufficiently material to warrant a rehearing. She submitted that she must be entitled to look to IAG to fulfil its policy obligations.

[51] The impossibility of the proposed defendants being joined by CRL, however, is a material change in circumstances here. The Associate Judge accepted that the presence of the proposed defendants was necessary to the proceedings but he considered that it would be better to have them joined by CRL as parties than by IAG as defendants. However, given what I accept is a material change in circumstances, this has effectively made the first option extremely unlikely, if not impossible. The Associate Judge's decision, therefore, does not ensure justice by having all relevant parties before the Court. With respect, it must, therefore, be seen as plainly wrong.

Review ground 5 – result plainly wrong/overall justice

[52] Before me, IAG argued that the result was plainly wrong for other reasons. The proposed defendants carried out work on the property and issued a certification as to work quality. They were thus involved in the defective workmanship matters which form Ms Robin's fundamental factual claims. As the Associate Judge appeared to accept, their presence as parties was necessary and desirable. IAG submitted that further proceedings concerning the same facts, documents and findings are an unacceptable prospect.

[53] IAG argued, too, that the Associate Judge's conclusion offended normal principles applying to multi-party litigation. Rule 4.56 encourages the collection into one proceeding of all available liability pathways. While a plaintiff's wishes are a factor to be considered, they are not determinative.[13] Rather the underlying rule is the pragmatism of avoiding a multiplicity of hearings.[14]

[54] The Associate Judge, it is said, seemed to accept the correct legal position that those whose acts or omissions caused the loss should be brought to account in one

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13 *Mainzeal Corporation Ltd v Contractors Bonding Ltd* (1989) 2 PRNZ 47 at [50].
14 *Fonterra Co-Operative Group Ltd v Waikato Coldstorage Ltd*, above n 3, at [13].

proceeding. He also accepted that findings of fact in this proceeding could impact on the rights or interests of the proposed defendants, as set out in the *Newhaven* test.[15]

[55] IAG submitted that the Associate Judge then went on, however, to decline joinder on the erroneous basis that it is CRL and/or OHML who should join the parties. However, this has not happened and seems not to be plausible now. IAG contended that it is unjust, therefore, for its ability to obtain recovery in the same proceeding to be negated because Ms Robin has only chosen to sue it and CRL.

[56] In response, Ms Robin seems to rely on the presumption that a plaintiff is entitled to sue whatever defendant it chooses.[16] She argued that there is no reason to disturb that presumption here. The present case, she says, is distinguished from those where the joinder of further defendants against the plaintiff's wishes was allowed, such as *Newhaven* and *Mainzeal*.[17]

[57] Ms Robin attempts to argue that the issue here is not whether the work was deficient, but solely whether IAG has restored the property to the policy standard. She suggested this does not depend on whether the repairs were carried out properly. However, this submission mischaracterises the proceeding and her pleadings. The quality of the repairs is in question. Ms Robin has sued CRL in tort for breaching its duty of care to her to carry out the repairs to a reasonable standard.

[58] The arguments under this ground largely overlap those discussed above. I consider that this is a case where the plaintiff's wishes should be overridden in the wider interests of pragmatism. The material change in circumstances has also made the Associate Judge's decision plainly wrong. It is in the interests of justice that the proposed defendants be present in order to deal with all relevant issues, to represent their own interests and to avoid a multiplicity of hearings.

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15 *Newhaven Waldorf Management Ltd v Allen,* above n 4, at [43] – [46].
16 *Paccar Inc v Four Ways Trucking Inc* (1995) 8 PRNZ 423 at 427.
17 *Mainzeal Corporation Ltd v Contractors Bonding Ltd,* above n 13; *Newhaven Waldorf Management Ltd v Allen,* above n 4.

Alternative third-party joinder application

[59] Given my finding that IAG's application to join the proposed defendants as defendants should have been allowed, there is no need to deal with its alternative application to join them as third parties. I note simply that, quite properly, this was not contested in any real way by Ms Robin and would have been allowed.

Disposition

[60] The decision to refuse IAG's application to join the proposed defendants as further defendants was plainly wrong in light of the likely impossibility of them being joined by other means. The Associate Judge also appeared, to some extent, to predetermine a substantive trial issue relating to IAG's liability. His conclusion, it seems, tended to influence his decision. Therefore, he took into account an irrelevant consideration.

[61] The present application, therefore, succeeds.

[62] I order that Houselifters Ltd, Max Contracts Ltd and the Christchurch City Council be joined as defendants.

Costs

[63] Costs are reserved. If counsel are unable to agree between themselves on the issue of costs then I direct that they may file memoranda (sequentially) on the issue which are to be referred to me and I will decide the question of costs based on the material then before the Court.

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Gendall J

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