



Supreme Court of New Zealand

17 December 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

NORTH SHORE CITY COUNCIL v BODY CORPORATE 188529 (SUNSET TERRACES) AND OTHERS (SC 27/2010)

NORTH SHORE CITY COUNCIL v BODY CORPORATE 189855 (BYRON AVENUE) AND OTHERS (SC 28/2010)

[2010] NZSC 158

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The North Shore City Council appealed from two decisions of the Court of Appeal regarding its liability for negligent inspection in leaky homes cases. Both appeals involved similar points of principle, albeit some issues arose only in one case or the other.

The Supreme Court has declined to reconsider the law as approved by the Privy Council in the case of *Hamlin* in 1996. It has done so for two reasons. Firstly, many people will have relied on that decision in organising their affairs. It would therefore be inappropriate to defeat that reliance by holding that the law was otherwise. Secondly, the Court is satisfied that the decision in *Hamlin* was and remains correct.

This means that the Court has affirmed that a council owes a duty to be careful when inspecting homes in the course of construction. The council is therefore liable for loss caused by negligent inspection. The duty is owed both to the first owner and to subsequent owners. All premises that are intended to be used as a home, according to the plans submitted to the council, are the subject of this duty. It does not matter whether the home is a stand-alone building or part of a block of apartments. The Court has upheld the decision of the Court of Appeal in this respect.

The Court has also upheld the decision of the Court of Appeal that a subsequent owner may sue the council for negligence, provided that owner has suffered loss as a result of the negligence, notwithstanding the fact that a previous owner may also have been able to sue the council.

On two other subsidiary issues concerning body corporates and the lack of a code of compliance certificate, the Court has agreed with the decision of the Court of Appeal.

Hence the two appeals by the Council have been dismissed.

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