Supreme Court of New Zealand

27 June 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

NORTH SHORE CITY COUNCIL v THE ATTORNEY-GENERAL AS SUCCESSOR TO THE ASSETS AND LIABILITIES OF THE BUILDING INDUSTRY AUTHORITY (SC 77/2010)
[2012] NZSC 49

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 owners of residential apartments in a block known as The Grange claimed against the North Shore City Council that it had been negligent in the issuance of The Grange's building consent and in its subsequent supervision of construction. That claim has now been settled by the Council. But while it was on foot, the Council made a third-party claim against the Attorney-General as successor to the Building Industry Authority (BIA), which had been dissolved by s 418 of the Building Act 2004. The Supreme Court has today struck out the Council's claims.

Under the claim the Council asserted, first, that the BIA was in breach of a duty of care owed to it when carrying out in 1995 a review of the Council's operations under the Act. Second, it claimed that the BIA was in breach of a duty of care in negligent misstatement in a report on that review sent to the Council, which lulled it into a false sense of security about its existing practices that were later found to be negligent. A third alleged breach of a duty of care was the failure by the BIA to correct that

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misstatement in 1998/1999, by which time the BIA is said to have been made aware of serious problems consequent upon the faulty installation of monolithic cladding. In respect of all of these alleged breaches the Council claimed to recover from the Attorney-General a contribution in damages for its loss suffered by reason of having paid the plaintiff owners. The Council's third-party statement of claim also alleged as a fourth head of claim a breach of a duty of care said to have been owed directly by the BIA to the plaintiff owners.

The Attorney-General applied to strike out the Council's claims. The High Court declined to do so (except in relation to the fourth head of claim), but on appeal, the Court of Appeal struck them all out. The Council appealed to the Supreme Court seeking reinstatement of its claims.

A majority of the Supreme Court (Blanchard, Tipping, McGrath and William Young JJ, with Elias CJ dissenting) has upheld the decision of the Court of Appeal striking out all four claims. The BIA under the Act lacked the necessary control over the Council to support a duty of care when undertaking its 1995 review. There was a disjunction between the purpose for which the BIA made its review and the immediate causes of the defects in The Grange. The Council was not vulnerable; rather it was able to protect itself, by putting itself in a position to operate its building control systems in a manner which would detect non-compliance with the building code that it was given the function of enforcing in its district. The Council's loss resulted from its own negligence. Additionally, the BIA did not assume responsibility as a matter of law to use reasonable skill and care in its preparation of its report. As the BIA was not under a duty of care under the Council's first two heads of claim in relation to the 1995 report, it cannot have been under any duty in 1998 to issue a correction of that report. Finally, there was no relationship of proximity between the plaintiff owners and the BIA as, under the Act, the BIA had neither a responsibility to inspect their property nor any power of inspection in relation to an individual building (save its power with respect to randomly chosen buildings in the context of carrying out its reviews).

The appeal was accordingly dismissed.

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