

IN THE SUPREME COURT OF NEW ZEALAND

**SC 27/2010
[2010] NZSC 79**

BETWEEN NORTH SHORE CITY COUNCIL
Appellant

AND BODY CORPORATE 188529
First Respondent

AND STEPHEN ROBERT DEVLIN , DAVID
PAUL HALFORD, CLIFFORD SCOTT
PARKINSON, JUDITH ROSEMARY
PARKINSON, KATRINA SANGHA
DAVINDER SANGHA, LISA ADELE
TURNER, MICHELLE JANETTE
TURNER AND BLUE SKY HOLDINGS
LIMITED (IN LIQUIDATION) AS
TRUSTEE OF THE AUCKLAND
RESIDENTIAL PROPERTY TRUST
Second Respondents

AND ROBERT HENRY GRAHAM BARTON
AND KAY BARTON
Third Respondents

AND R F COUGHLAN & ASSOCIATES
Fourth Respondent

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: D Goddard QC for Appellant
M C Josephson and A K Hough for Respondents

Judgment: 13 July 2010

JUDGMENT OF THE COURT (SUNSET TERRACES)

- A The application for leave to appeal by the North Shore City Council is granted.**
- B The approved grounds are:**

- (i) **Whether and in what circumstances a local authority which performed regulatory functions under the Building Act 1991 in relation to the construction of a multi-unit residential development owed a duty of care to purchasers of units in the building to ensure that it complied with the building code.**
 - (ii) **Assuming such a duty exists, whether it extends to:**

 - (a) **Such persons who did not themselves at the time of purchase intend personally to occupy their unit(s) (investor owners); and**
 - (b) **Persons who subsequently acquired such units from the first purchasers after a claim for breach of duty to their predecessors had accrued; and**
 - (iii) **In light of the conclusions reached on the foregoing grounds, how these issues should be determined in the particular cases.**
- C The application for leave to appeal by the Second Respondent, Blue Sky Holdings Ltd, is dismissed with costs of \$2,500 to the North Shore City Council.**

REASONS

[1] Although we have granted leave to appeal to the North Shore City Council on the grounds set out above, we decline leave for the proposed cross-appeal by Blue Sky Holdings Ltd. Its proposed argument that the Council was negligent in issuing a Land Information Memorandum (LIM), notwithstanding concurrent findings below that the LIM was accurate on its face, has no merit. It would be expecting far too much of a territorial authority if on every occasion on which it issued a LIM which referred back to a document which it had issued on a previous occasion, the territorial authority was obliged to consider whether the earlier document had been properly issued. Moreover, if we were to hold to the contrary, a fresh limitation period would begin to run from the date of issue of the LIM, perhaps many years after the right to claim in respect of the original document had become statute barred. That would be quite contrary to the obvious intention behind the inclusion in the building legislation of a limitation period.

Solicitors:
Heaney & Co, Auckland for Appellant
Grimshaw & Co, Auckland for Respondents