



HIGH COURT OF AUSTRALIA

Public Information Officer

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WOOLCOCK STREET INVESTMENTS PTY LTD v CDG PTY LTD (formerly Cardno & Davies Australia Pty Ltd) AND JOHN CAMERON JOHNSON

A company which bought a Townsville warehouse and office complex could not sue the consulting engineers who had originally designed the complex's foundations when the building started to show structural defects, the High Court of Australia held today.

In 1987 the trustee company for a property trust engaged Cardno and Davies to provide engineering services for the building project. Mr Johnson, a civil engineer with Cardno and Davies, was project manager. In 1992 Woolcock Street Investments bought the complex after having a building inspection carried out. The sale contract did not include any warranty that the building was free from defect, nor did the trustee company assign to Woolcock Street any rights it may have had in respect of such defects. In 1994 substantial structural distress appeared, due to settlement of the foundations designed by Cardno and Davies or the material below the foundations or both. Cardno and Davies and Mr Johnson denied they owed Woolcock Street a duty of care in designing the foundations and denied breach of any such duty. They said they advised the original owner to allow them to obtain soil tests but the owner told them to proceed without them and to use standard structural footing sizes.

In the Queensland Supreme Court the parties consented to an order stating a case for the opinion of the Court of Appeal. The Court of Appeal held that Woolcock Street's statement of claim disclosed no cause of action in negligence and concluded that although the 1995 High Court decision, *Bryan v Maloney*, established that the builder of a house may owe a duty of care to later purchasers, those who built or designed commercial buildings did not. (The decision in *Bryan v Maloney* has now been superseded in most states and territories by statutory schemes for protection of successive owners of dwellings.) Woolcock Street appealed to the High Court.

The Court held that in cases involving only economic loss cases, vulnerability – in the sense of a plaintiff's inability to protect itself from the consequences of a defendant's lack of reasonable care – was an important consideration. Woolcock Street could have taken steps to ensure that the sale contract contained warranties or an assignment of any rights the original owner may have had in respect of claims for defects. Furthermore, it was not alleged that the engineers breached any obligation to the original owner. The owner had asserted control over the project, including any investigations the engineers might have undertaken. Unlike *Bryan v Maloney*, there was neither reliance by the owner nor the assumption of responsibility by the engineers.

The High Court, by a 6-1 majority, dismissed the appeal.

- *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.*