



HIGH COURT OF AUSTRALIA

8 October 2014

BROOKFIELD MULTIPLEX LTD v OWNERS CORPORATION STRATA PLAN 61288 & ANOR

[2014] HCA 36

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The High Court held that Brookfield, the builder of a strata-titled apartment complex, did not owe a duty of care to the Owners Corporation to avoid causing it economic loss resulting from latent defects in the common property.

Brookfield built the complex pursuant to a design and construct contract with a developer who owned the land on which it was built. Upon the registration of a strata plan in relation to the part of the complex which was to be used for serviced apartments, the Owners Corporation was created by operation of law. The common property was vested in the Owners Corporation as manager of the strata scheme and as agent for the owners of the serviced apartments.

The design and construct contract contained detailed provisions with respect to the quality of the work to be performed by Brookfield and required Brookfield to remedy defects or omissions in the work within a defined defects liability period. The standard form contract of sale to purchasers of the serviced apartments, annexed to the design and construct contract, conferred on each purchaser specific contractual rights in relation to defects in the property, including the common property.

The Owners Corporation commenced proceedings against Brookfield in the Supreme Court of New South Wales to recover damages including the cost of repairing latent defects in the common property of the apartment complex. Brookfield was said to be liable in negligence for breach of a duty to take reasonable care to avoid a reasonably foreseeable economic loss to the Owners Corporation in having to make good the consequences of latent defects caused by the building's defective design and/or construction. The primary judge held that Brookfield did not owe the duty propounded by the Owners Corporation. On appeal, the Court of Appeal unanimously held that Brookfield did owe the Owners Corporation a duty of care, albeit a narrower duty to avoid causing loss resulting from latent defects which were structural or dangerous or which made the serviced apartments uninhabitable.

By grant of special leave, Brookfield appealed to the High Court. The Owners Corporation was granted special leave to cross-appeal, and sought orders providing for a wider duty of care than that found by the Court of Appeal. The High Court allowed the appeal, dismissed the cross-appeal, and held that Brookfield did not owe the duty of care propounded by the Owners Corporation or found by the Court of 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.*