



Supreme Court of New Zealand

11 October 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**BODY CORPORATE NO. 207624 v NORTH SHORE CITY COUNCIL [*Spencer on Byron*]
(SC 58/2011)
[2012] NZSC 83**

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.

This case concerns the building known as Spencer on Byron in Byron Avenue, Takapuna. The building is principally a hotel but also has six penthouse apartments. The building leaks. Many of the owners of the hotel and penthouse units as well as the body corporate of the building brought proceedings in the High Court claiming that a number of those responsible for the construction of the building, including the (former) North Shore City Council, had been negligent and were accordingly liable for the cost of repairs. The Council applied to strike out the claims made against it on the basis that councils owed a duty of care only in respect of residential buildings, not mixed residential-commercial buildings such as this.

The Court of Appeal accepted the Council's submission, struck out the owners' claims against the Council and entered summary judgment in favour of the Council.

The owners appealed. The primary issue before the Supreme Court was whether the Council owed a duty of care when approving plans and inspecting construction of a building which was not purely a residential building.

A majority of the Court (Elias CJ, Tipping, McGrath and Chambers JJ) has held that the Court of Appeal should not have struck out the owners' claim and entered summary judgment for the Council. The Supreme Court had confirmed in *North Shore City Council v Body Corporate 188529* [2010] NZSC 158, [2011] 2 NZLR 289 (*Sunset Terraces*) long-standing New Zealand case law that councils owed a duty of care to building owners when inspecting residential buildings. (The Court had been careful to restrict what it held in that case as it knew that cases involving defective non-residential buildings were on the horizon.) The Court has now held that the duty of care confirmed in *Sunset Terraces* applies regardless of the nature of the premises. This decision is restricted to work done by councils while the Building Act 1991 was in force. Councils' duty was restricted to taking reasonable care that buildings were constructed in accordance with the building code.

The majority has held that recognising a duty of care in respect of commercial or mixed use buildings was consistent with previous authority in New Zealand and the provisions of the Building Act 1991. In this case, the majority was satisfied that the relationship between the owners and the Council was sufficiently proximate to give rise to a duty of care, and that there were no factors external to that relationship which would make the proposed duty of care unfair or unreasonable. There was no principled basis for distinguishing between the liability of those who played a role in the construction of residential buildings as against the construction of non-residential buildings.

McGrath and Chambers JJ summarised the law in this area at [215]–[218] of their reasons. Elias CJ, at [22], and Tipping J, at [26], have expressly agreed with that summary.

William Young J would have held that the Council did not owe a duty of care except in relation to the residential part of the building, namely the penthouse apartments.

The owners' appeal has accordingly been allowed. They are permitted to continue with their claim against the Council and the other defendants. At this stage of the proceeding, no findings have been made as to whether any of the defendants (including the Council) were in fact negligent.

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