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Spencer On Byron owners sue lawyers, \$37m leaky building repairs underway

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Spencer on Byron, now under repair. Photo / Janna Dixon



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repairs have sued lawyers who acted for them.

Spencer on Byron's body corporate sued Grimshaw & Co for professional negligence.

Grimshaws has previously acted for the owners in what the court called a major leaky building case for the multi-level tower on Byron Ave.

Justice Roger Bell said Grimshaws & Co replaced other lawyers who started the claim in 2007. The case settled in 2013 and Grimshaws got the settlement proceeds. But differences arose about how those should be paid, particularly whether owners who did not take part in the proceedings should get the money.

Non-plaintiffs

The case went to mediation and an agreement was struck but the body corporate now says that was invalid and unenforceable, the judge said.

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The judge said if the funds could have been used at the start of 2014, estimated repair costs were only around \$26m, much cheaper than the now-estimated \$37m bill which had spiralled: "The remedial work started in May 2018 and is now estimated to cost \$37m."

The body corporate claimed damages of:

- \$128,000 interpleader proceedings;
- \$13,000 mediator fees;
- \$80,000 fees charged by Grimshaws;
- \$45,000 commission charged;
- \$11.3m increase in remedial costs.

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Grimshaw & Co denied liability and said even if it had been negligent, it did not cause all the losses claimed by the body corporate. It also sought discovery of documents from the body corporate.

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The body corporate said the distribution agreement was invalid and unenforceable. It did not provide for owners who were not plaintiffs yet still had claims on the fund, nor for others who had sold their units.

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"It was no use when the settlement proceeds were to be divided," the judge said of the body corporate's claim.

"The body corporate's case is that Grimshaw & Co ought to have reviewed the agreement and recommended that it be amended, given changes in circumstances," the judge said.

The body corporate also made a discovery application but Grimshaw said unit title leaky building litigation was "document-heavy" - and this case had generated 86 large boxes of documents, each with five to seven files and each with hundreds of pages.

The judge dismissed the body corporate's discovery application and said that by March 13, it should file a more detailed request for documents. A further case management conference is envisaged next month.

dealing with this matter on the committee". Sissons did not respond to an inquiry for comment, nor did Grimshaws' Paul Grimshaw.

Two years ago, Auckland Council identified the tower as being one of 25 buildings with an exterior aluminium composite cladding with a flammable polyethylene core but it stressed such buildings had other means of fire protection such as alarms and sprinkler systems.

Brosnan Construction began repairing the 255-unit block last March and expects to complete the work in July 2022. Disruption had to be minimised at the block which has not been evacuated during repairs.

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"This live environment consists of 255 apartments, a hotel, restaurant, bar and conference rooms—the majority of which is to remain functional throughout the project," the builders said.

"Our answer was to design an innovative hanging scaffolding system for levels seven to 21, known as the high riser. This New Zealand-first system allows work to be carried out two floors at a time; all other levels remaining operational with almost no visual intrusion to guests and residents," Brosnan said of the job.

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