

Brookfield Multiplex Ltd v. The Owners – Strata Plan No 61288 [2014] HCA 36

In 1999 Brookfield Multiplex Ltd (“**Multiplex**”), as principal builder, completed construction of a residential apartment building which was subsequently strata subdivided. The Owners – Strata Plan No 61288 (“**Owners Corporation**”) came into existence upon registration of the strata subdivision plan. Some 8 years after completion latent (i.e. not obvious) defects were discovered in the building. The Owners Corporation commenced proceedings against Multiplex for damages on the basis that Multiplex owed the Owners Corporation and unit owners for the time being a duty of care, which was breached by Multiplex in allowing the defects to occur.

Multiplex won the case when it was decided by a single NSW Supreme Court Judge. The Owners Corporation appealed to the NSW Court of Appeal, which reversed the decision in favour of the Owners Corporation. Multiplex then appealed to the High Court of Australia.

The High Court reversed the decision of the NSW Court of Appeal in favour of Multiplex, holding that there is no common law duty of care owed by a builder to the ultimate owner of the common property in strata schemes or to the individual unit owners.

While this decision provides welcome relief for the construction industry it will not do anything to address the growing problem of building defects in strata properties and will ultimately put even more pressure on Governments to introduce new measures to protect the interests of home unit owners.