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Southland Stadium

A win for councils in the Court of Appeal.

WE CELEBRATE THIS WONDERFUL VICTORY FOR COUNCILS AT APPELLANT LEVEL.

On March 21, 2017, the Court of Appeal gave judgment in a case concerning the collapse of Stadium Southland's roof. The Court of Appeal overturned the High Court's decision and found that the Invercargill City Council was not liable. (*Invercargill City Council v Southland Stadium Leisure Centre Charitable Trust* [2017] NZCA 68.)

The case is important for a number of reasons but in this article we focus on the comments made by the court on duty.

The legal background

In 1996 the Privy Council considered the "duty" owed by New Zealand councils for building defects. (*Invercargill City Council v Hamlin* [1996] 1 NZLR 513.) It found that councils owe a duty to act reasonably in exercising their statutory functions to ensure that houses are constructed in accordance with the appropriate building regulations.

Over the years we have conducted a number of cases challenging the extent of the duty owed by councils. We managed to successfully defend commercial claims (ie, motels, rest homes, lodges etc) until 2013 when the argument was considered by the Supreme Court in a case known as *Spencer on Byron. (Body Corporate 207624 v North Shore City Council* [Spencer on Byron] [2013] 2 NZLR 297.)

This case concerned a high-rise apartment block containing hotel rooms and private residences. The Supreme Court held that the *Hamlin* duty was applicable to all owners including commercial ones.

The facts

In 2000, the Southland Stadium Trust constructed a substantial stadium complex in Invercargill. During construction the roof trusses were found to be sagging. The Trust had to carry out repair work. The council required a building consent for that work. The Trust, through its experts and building parties, carried out the repairs and the council issued a code compliance certificate.

The council did not inspect the repairs because it relied upon the Trust's engineer. It was a condition of the building consent that the engineer provide a producer statement for the remedial work. Unfortunately, the code compliance certificate was issued before the council obtained the engineer's producer statement and thus in error.

By 2006 the Trust was concerned that the roof was flexing. It engaged its own engineer to review the design. The Trust was told that it should check the repair welds. It failed to heed the advice of its own expert.

In September 2010, there was a significant snow storm in Invercargill. The roof trusses were unable to withstand the snow load because they had been inadequately repaired. The stadium roof collapsed. The losses were huge. The Trust's insurers sued the council for close to $30 million.

High Court

In 2015 the case was heard in the Christchurch High Court. The High Court determined that the council owed the Trust a duty of care in connection with the repair work and gave judgment against the council for approximately $15 million.

Appeal

One of the Court of Appeal judges (Justice Miller) determined that the council only had a limited duty. Though the council may have been negligent, it was not liable to the Trust because it was not the council that caused the loss. The Trust knew that the council was not inspecting the remedial work and relied upon its own experts rather than the council. Justice Miller was critical of the Trust for failing to heed the warnings it received from its own engineers in 2006, particularly because it appears it did not pass the information on to the council.

The other two judges (Justices Harrison and Cooper) held that the council did not owe the Trust a duty of care in circumstances like this where the defective work was undertaken by the party's own contracted building parties and under the guidance of their experts.

We will be sure to update you on the likely appeal to the Supreme Court. In the meantime, we celebrate this wonderful victory for councils at appellant level. **LG**