IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2012-404-6290
[2017] NZHC 511

BETWEEN	BODY CORPORATE 346799 First Plaintiff
	HA THI HOANG & ORS Second Plaintiffs
AND	KNZ INTERNATIONAL CO LIMITED First Defendant
	BROOKFIELD MULTIPLEX CONSTRUCTIONS (NZ) LIMITED (IN LIQUIDATION) Second Defendant

... continued

Hearing:	12-14, 17-21 and 25 October 2016, 5 and 14 December 2016
Further submissions:	1, 15, 19 and 21 December 2016
Counsel:	G B Lewis and L M Deane for Plaintiffs D T Broadmore for Second Defendant S A Thodey and L J Douglas for Fifth Defendant
Interim Judgment:	7 March 2017
Final Judgment:	22 March 2017

JUDGMENT OF THOMAS J

This judgment was delivered by me on 22 March 2017 at 3.00 pm pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date:.....

FAÇADE DESIGN SERVICES LIMITED
Third Defendant

PBS CONTRACTING LIMITED (IN LIQUIDATION)
Fourth Defendant (Discontinued)

AUCKLAND CITY COUNCIL
Fifth Defendant

BOSTIK NEW ZEALAND LIMITED
Sixth Defendant (Discontinued)

STEPHEN MITCHELL ENGINEERS LIMITED
First Third Party (Discontinued)

STEPHEN MITCHELL
Second Third Party (Discontinued)

CITY DESIGN LIMITED
Third Third Party (Discontinued)

DAVID LEE
Fourth Third Party (Discontinued)

DAVID JAMES FORSTER
Fifth Third Party (Discontinued)

TRISTAN D'ARCY HARVEY-SMITH
Sixth Third Party (Discontinued)

WILLIS NEW ZEALAND LIMITED
Seventh Third Party (Discontinued)

RONALD CHARLES HANLEY
Eighth Third Party

Introduction

[1] This claim concerns building defects at the Victopia Apartments (the Building), a 203 unit complex at 135 Victoria Street West, Auckland Central, situated on the corner of Victoria and Nelson Streets (the Property). The claim is brought by the body corporate and the 199 of the unit owners.

[2] The defects in the Building concern the cladding, balconies, podium and the passive fire protection.

[3] Six defendants are listed in the proceeding. The claim against the fourth defendant was stayed pursuant to s 248 of the Companies Act 1993 when it was placed into liquidation on 25 May 2016. The plaintiffs and the fifth defendant, Auckland City Council (the Council), have discontinued their claim against the sixth defendant and sought and been granted leave to discontinue the plaintiffs' actions against the third defendant and the Council, and the Council's actions against the third defendant and eighth third party. The plaintiffs now seek judgment against the first and second defendants, KNZ International Co Limited (KNZ) and Brookfield Multiplex Constructions (NZ) Limited (In Liquidation) (Multiplex) respectively. The Council cross-claims against KNZ and Multiplex.

[4] The case commenced on 12 October 2016 and the hearing lasted for approximately two weeks. The claimed losses, including consequential loss and general damages, were $54,393,481. The plaintiffs then resolved their claims against the third, fifth and sixth defendants and eighth third party.

[5] Since KNZ and Multiplex have filed statements of defence, the relevant rule for judgment is r 10.7 of the High Court Rules, which provides:

> If the plaintiff appears and the defendant does not, the plaintiff must prove the cause of action so far as the burden of proof lies on the plaintiff.

[6] A hearing took place on 5 December 2016.

Background

[7] In 2002 the first defendant, KNZ, engaged ADC Architects to prepare designs for the construction of the Building being a 16 level (including two basement levels) 203 unit apartment building at the Property to be known as Victopia Apartments.

[8] In 2002/2003 ADC Architects prepared plans and a specification for the construction of the Building. KNZ engaged Tonkin & Taylor to provide a geotechnical report and the engineer Stephen Mitchell to provide structural designs for the Building.

[9] In July 2003 KNZ took title to the Property.

[10] On 1 November 2003 KNZ entered into a contract with Multiplex to construct the Building (the Contract). KNZ engaged Brian Duffy of Contrado Ltd as engineer to the Contract.

[11] On 21 July 2003 ADC Architects applied to the Council on behalf of KNZ for building consent for stage one of the Building, being the basement structure up to podium level. On 15 September 2003, the Council issued a building consent for the stage one works.

[12] On 22 September 2003 Multiplex applied to the Council on behalf of KNZ for a building consent for stage two of the Building, being the structure and fire report. On 7 November 2003 the Council issued building consent for the stage two works.

[13] On 8 December 2003 Multiplex applied to the Council on behalf of KNZ for a building consent for stage three of the Building, being the architectural building services and balance of structure (roof and canopies). On 27 May 2004 the Council issued building consent for the stage three works. It is the stage three works which are the subject of the claims in this proceeding.

[14] In the period from July 2003 until May 2005, Multiplex and its subcontractors constructed the Building. The Council undertook inspections.

[15] On 17 May 2005 the Council issued Code Compliance Certificates (CCCs) for the construction of the Building.

[16] In November 2011, the first plaintiff, Victopia body corporate 346799 (the Body Corporate), engaged Maynard Marks Building Consultants to investigate defects in the Building including cracking to the exterior cladding and leaks in the podium and level 14 balconies. The Body Corporate asked Maynard Marks to advise on the remedial works necessary to remedy the defects and to prepare designs for the remedial work.

[17] From 2012 until 2015 Maynard Marks and its subconsultants undertook investigations of the Building. They identified four main defects, the cracking of the Eterpanel cladding system (one of three cladding systems on the Building), the failure of the balcony membranes, defective waterproofing to the ground level podium (carpark) and passive fire (fire stopping) defects.

[18] The plaintiffs issued proceedings against the defendants on 19 October 2012.

Plaintiffs

[19] The plaintiffs are:

(a) the Body Corporate; and

(b) the owners of the 199 units of the Building set out in Sch 1 to Statement of Claim dated 29 June 2016.

[20] The Body Corporate claims for the cost of repairing common property in the Building and the unit owners claim the cost of repairing unit property and associated losses.

Additional assignees

[21] The statement of claim dated 29 June 2016 records in sch 1 and paragraphs 16 to 33 that the owners of 18 units claim as assignees, having taken an assignment of choses in action from a former owner.

[22] When the hearing commenced on 12 October 2016 leave was given to add the following parties as assignees pursuant to r 7.7 of the High Court Rules:

(a) Unit 3E. The assignee is 187 Holdings Ltd.

(b) Unit 10F. The assignee is Hae Min Yeon.

First defendant

[23] KNZ was the developer of the Building.

[24] KNZ filed statements of defence dated 3 December 2012, 8 May 2013 and 26 June 2015. On 29 June 2016 the Court granted leave to KNZ's solicitors to withdraw. KNZ has not taken any steps in the proceeding since.

Second defendant

[25] The second defendant is the construction company, Multiplex.

[26] The plaintiffs served the proceeding on Multiplex on 30 October 2012. Multiplex went into liquidation on 3 December 2012. It has advised the Court that any judgment obtained against it may have consequences for the distribution of its assets in the liquidation and its rights against its insurers. Accordingly, Multiplex sought to reserve all its rights in respect of the proceeding.

[27] On 11 April 2013, the Court ordered that the proceeding against Multiplex continue and granted leave to the defendants to cross-claim.

[28] Multiplex filed statements of defence dated 2 September 2013 and 22 November 2013. Multiplex admitted its involvement in the construction of the Building. It denied the existence of the defects and denied any liability.

[29] On 10 April 2014, Multiplex filed a memorandum stating it did not intend to take any further significant steps to defend the claim (although it reserved the right to do so). It has not taken steps in the proceeding since that time, apart from an appearance at the hearing on 5 December 2016.

Evidence

[30] The plaintiffs filed affidavit evidence in support of their claims against KNZ and Multiplex as follows:

(a) John Franceschini, industrial and forensic chemist and director of Sharp & Howells Pty Limited, gave evidence of his investigations of the balcony membranes, the cause of failure of the membranes and breaches of the building code made pursuant to the Building Act 1991[1] (the Building Code);

(b) Simon Paykel, building surveyor and director of Maynard Marks, gave evidence on the podium and balcony defects, the resulting damage, compliance with the Building Code and the proposed remedial works;

(c) Geoffrey Merryweather, fire engineer and managing director of Anvil Fire Consultants Limited, gave evidence on his investigations of the fire defects, breaches of the Building Code and the repairs arising from each defect;

(d) Peter Robin Jordan, building surveyor, gave evidence on the liability of Multiplex;

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1 The Building Act 1991 was in force at the relevant time.

(e) Peter Moore, project manager for Maynard Marks, responsible for the project management and contract administration of the proposed remedial works, gave evidence on the proposed remedial solution and the process by which the work was tendered;

(f) John Ewen, quantity surveyor of Rider Levett Bucknall, gave an estimate of cost for the proposed remedial works based on the Teak tender and sets out the costs in relation to each defect;

(g) Stephen Mackisack, valuer for Seagar and Partners (Auckland) Limited, gave evidence on the consequential losses suffered by the owners;

(h) Graeme Carruthers, chartered accountant and director of nsaTax Limited, gave evidence on the GST applicable to the damages; and

(i) Paula Beaton, the director of Body Corporate Administration Limited, the Body Corporate secretary, gave evidence on the s 74 scheme under the Unit Titles Act 2010 and the various costs relating to the remedial works.

[31] The plaintiffs also relied on the evidence presented at the hearing which commenced on 12 October 2016:

(a) Colin Lim, a facade engineer and Associate Director of Facades of Aecom, gave evidence as to the cause of the cracking to the Eterpanel sheets being the cladding to the Building and compliance with the Building Code; and

(b) owners and/or previous owners of the 199 units, whose evidence was admitted by consent.

DEFECTS

Cracked cladding sheets on Eterpanel system

[32] The Eterpanel cladding system (also called Panelclad) on the Building covers most of the northern and southern elevation and part of the western elevation.

[33] The Eterpanel rain screen sheets on the Eterpanel system are subject to widespread cracking and in many places pieces of the cladding from the corners of the sheets have fallen off the Building.

[34] The plaintiffs' expert Colin Lim (facade engineer) undertook investigations in 2012 and 2015 and identified that on the southern elevation 57 per cent of the Eterpanel sheets were cracked; on the western elevation 100 per cent of the Eterpanel sheets were cracked; and on the northern elevation 59 per cent of the Eterpanel sheets on the eastern side and 43 per cent of the Eterpanel sheets on the western side were cracked.

[35] This defect constitutes a breach of cls B1 (Structure) and B2 (Durability) of the Building Code.

[36] The plaintiffs' expert Mr Lim was of the opinion that the main cause of the cracking is that the fixing of the Eterpanel sheets does not allow for the movement in the sheets caused by thermal and moisture effects and differential movement between the aluminium rails and the cladding sheets.

[37] Mr Lim's analysis was supported by his measurement of the thermal expansion of the Eterpanel material, his analysis of the distribution of the stresses on a typical cladding sheet arising from thermal movement, the lack of any allowance for movement in the fixing of the cladding sheets, the pattern of cracking around the fixings, and the fact that the cracking occurs on the system most exposed to weather and heat.

Balcony waterproofing defects

Construction

[38] Each of the 203 apartments in the Building has one balcony with the exception of three apartments on level 14 which each have three balconies, giving a total of 206 balconies.

[39] The construction of the balconies comprises: a concrete slab, a layer of screed (cement based), a ASA Dampfix 3 waterproofing membrane, ASA Asaphonic acoustic tile adhesive, tiles, and grout between the tiles.

[40] In the period from 2012 to 2015 the plaintiffs' building consultants, Maynard Marks, investigated 154 of the 206 balconies. They removed balcony tiles on 37 apartments and inspected the membranes below. They performed multiple tests on some balconies.

Failure of membrane

[41] The Maynard Marks investigations indicated that the Dampfix 3 waterproofing membranes on the horizontal surface of the balconies had deteriorated causing them either to turn into a soft mushy substance or become tacky. The membrane had not properly bonded to either the concrete/screed substrate below or the tile adhesive above. The Dampfix 3 had ceased to act as an effective waterproofing membrane.

[42] As a result of the failed membrane, the balcony tiles have become loose, lifting in locations. There are cracks to numerous tiles and the grouting between the tiles has degraded. Moisture has been trapped below the tile surface. In places this moisture bubbles up through the grout cracks when pressure is applied to the tiles by hand or foot.

Cause of membrane failure

[43] The plaintiffs engaged John Franceschini, an industrial and forensic chemist from the Melbourne materials testing laboratory, Sharp & Howells Pty Ltd, to

investigate the cause of the failure of the membrane. Mr Franceschini undertook a site investigation and laboratory testing. He concluded the deterioration of the membrane arose from an incompatibility between the Asaphonic tile adhesive and the Dampfix 3 waterproofing membrane. In particular, solvents in the Asaphonic (phthalate plasticiser and xylene) migrated into the Dampfix 3 causing it to deteriorate.

Internal damage

[44] Water has leaked from the balcony surfaces of apartments 14B and 14E and the adjacent balcony walls into the interior of apartments 13C and 13E below causing water damage to the ceiling and walls of these apartments. Maynard Marks sent samples of the damaged building elements from these apartments to microbiological consultants for testing. This testing indicated the toxigenic mould Stachybotris was present in the building elements. In the absence of functioning waterproof membranes on the balconies there is a risk of further moisture ingress into the Building in the future.

Building Code breaches

[45] Mr Franceschini and Mr Paykel said the balcony waterproofing defect (the failed waterproofing membranes) has resulted in breaches of the following Building Code provisions:

(a) Clause B1 (Structure). Clause B1.3.1 provides:

> Buildings, building elements and site work shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during construction or alteration and throughout their lives.

Building elements means:

> Any structural or non-structural component and assembly incorporated into or associated with a building. Included are fixtures, services, drains, permanent mechanical installations for access, glazing, partitions, ceilings and temporary supports.

The failure of the balcony membranes has resulted in breaches of cl B1.3.1 in that the membrane has ruptured, become unstable, lost equilibrium and collapsed.

(b) Clause B1.3.2 which provides:

> Buildings, building elements and site work shall have a low probability of causing loss of amenity through undue deformation, vibratory response, degradation, or other physical characteristics throughout their lives or during construction or alteration when the building is in use.

Amenity is defined as:

> An attribute of a building which contributes to the health, physical independence, and well being of the building's users but which is not associated with disease or a specific illness.

The failure of the membrane has resulted in a breach of cl B1.3.2 in that it has caused a loss of amenity. The integrity of the balconies contributes to the wellbeing of the users. The balconies tiles have moved and lifted, tiles have cracked, grout has dislodged, and water is trapped under the tiles and able to bubble up between the tiles where the grout has been dislodged. This results in loss of amenity.

(c) Clause E2 (External moisture). Clause E2.2 provides:

> Buildings shall be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside.

The failure of the membrane has resulted in breaches of cl E2.2 in that water has been able to penetrate the Building.

(d) Clause E2.3.2 provides:

> Roofs and exterior walls shall prevent the penetration of water that could cause undue dampness, or damage to building elements.

The failure of the membrane has resulted in breaches of cl E2.3.2 in

that water has been able to penetrate the membrane and the external walls causing damage to the interior of apartments 13C and 13E.

(e) Clause B2.3.1 provides:

> Building elements must, with only normal maintenance, continue to satisfy the performance requirements of this code for the lesser of the specified intended life of the building, if stated, or:
>
> (a) the life of the building, being not less than 50 years, if:
>
> i. those building elements (including floors, walls, fixings) provide structural stability to the building, or
>
> ii. those building elements are difficult to access or replace, or
>
> iii. failure of those building elements to comply with the building code would go undetected during both normal use and maintenance of the building.

[46] Mr Paykel's evidence was that the durability period for the liquid applied membranes on the balconies of the Building is 50 years.[2] He says the tiles on the Victopia balconies are directly fixed to the liquid applied membrane. In order to access or replace the membranes it is necessary to remove the acoustic adhesive, the tiles and all of the cladding adjacent to the balconies where the membrane upstand runs up the wall. The liquid applied membrane is difficult to access or replace (cl B2.3.1(a)(ii)) and failure of the liquid applied membrane to comply with the Building Code would go undetected during both normal use and maintenance of the Building (cl B2.3.1(a)(iii)).

[47] The plaintiffs say the failure of the membranes has already resulted in breaches of cls B1 and E2, well within the 50 year period, and there is a risk of further non-compliance with these clauses within the balance of the 50 year period.

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2 I am aware that this conclusion is disputed by at least some parties. In the context of the formal proof hearing, it is unchallenged evidence.

Podium

[48] The ground floor podium is located immediately in front of the main entrance to the Building. It provides the main pedestrian access and parking. The podium has an asphalt surface applied over a bituminous sheet membrane.

[49] The plaintiffs claim that the waterproofing of the podium area is defective in that there is:

(a) a lack of an adequate upstand at the junction with the wall;

(b) a lack of a protective flashing at the top of the membrane upstand at the junction with the wall;

(c) a lack of a transitional fillet at the junction where the membrane changes from horizontal to vertical;

(d) poor detailing at the junctions between:

(i) the podium entry threshold membrane and the balcony and front entrance tiled areas; and

(ii) the junction at the lower level balconies where an overflow is incorporated between the concrete balustrades.

[50] The plaintiffs' experts said these defects are allowing moisture to migrate into the carpark on the eastern and western elevations of the podium causing damage to plasterboard wall linings and undue dampness in the carpark.

Fire defects

[51] At the time of the construction of the Building cl C3 of the Building Code (Spread of Fire) applied. Clause C3 included requirements for fire and smoke separations. These separations, including floors and walls, were intended to meet fire resistance ratings. This is known as "passive fire protection". Any penetrations in the walls or floors such as doors, pipes, and cables were required to meet the fire

resistance rating of the wall. The sealing of the penetrations to meet this rating is known as fire stopping.

[52] In 2015, the Body Corporate, at Maynard Marks recommendation, engaged a fire engineer named Geoffrey Merryweather of Anvil Fire Consultants Ltd to investigate the passive fire protection in the Building.

[53] The investigation identified that the fire stopping to the walls, floors, doors, mechanical installations, plumbing, fire protection services and electrical services was defective and did not comply with cl C3 of the Building Code. Mr Merryweather identified 24 different types of passive fire defect as set out in sch 2 of the statement of claim. These defects primarily relate to the failure properly to fire stop (or seal) penetrations through walls and floors such as doors, cables and pipes and gaps around penetrations.

CLAIM AGAINST KNZ INTERNATIONAL CO LTD

Nature of duty of care

[54] A developer has a duty of care to a purchaser. The classic case, as cited by the plaintiffs and Council, is *Mount Albert Borough Council v Johnson*:[3]

> In the instant type of case a development company acquires land, subdivides it, and has homes built on the lots for sale to members of the general public. The company's interest is primarily a business one. For that purpose it has buildings put up which are intended to house people for many years and it makes extensive and abiding changes in the landscape. It is not a case of a landowner having a house built for his own occupation initially — as to which we would say nothing except that Lord Wilberforce's two-stage approach to duties of care in *Anns* may prove of guidance on questions of non-delegable duty also. There appears to be no authority directly in point on the duty of such a development company. We would hold that it is a duty to see that proper care and skill are exercised in the building of the houses and that it cannot be avoided by delegation to an independent contractor.

[55] Therefore, a developer who acquires land and then builds an apartment complex on it for sales of the apartments to members of the public owes a duty to see that proper care and skill is exercised in the building of the complex, and the duty cannot be avoided by delegation to an independent contractor.

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3 *Mount Albert Borough Council v Johnson* [1979] 2 NZLR 234 (CA) at 240.

[56] This dicta has been applied in a number of other cases. It remains current, and the duty of care imposed on developers is referred to as "non-delegable".[4]

[57] In *Body Corporate No 187820 v Auckland City Council*, Associate Judge Doogue attempted to determine whether a financier was a developer.[5] He said the two "essential characteristics" which gave rise to a non-delegable duty of care were:

> a) Direct involvement or control in the building process, for example, by way of planning, supervising, or directing the work. This supplies the required degree of proximity.
>
> > In Johnson (above) the developer described itself on the building application as builder as well as owner, obtained the building permit, and was "constantly involved in discussions with the partners about details of the work". It was not a case of a land owner engaging a firm of builders and leaving it to them.
> >
> > In *Morton* (above), the defendant was even more closely involved in the building process and the Court explicitly equated it with the builder. This was notwithstanding the fact that the company retained independent contractors to carry out the building and carpentry work.
> >
> > If the role of the defendant is not to direct or control the quality of the building or if it is not in a position to control the building process, it is difficult to see how its actions will result in foreseeable harm to the ultimate owners. The issue here seems to be one of the degree of the defendant's responsibility for the state of affairs that has come into existence.
>
> b) That the company is in the business of constructing dwellings for other people for profit. It acquires and subdivides land, and puts up buildings intended to house people for many years, making extensive changes in the landscape. In these circumstances, a development company will owe a duty to see that proper care and skill are exercised in the building of the houses. It cannot escape responsibility by delegation to a sub-contractor.

[58] In *Keven Investments Ltd v Montgomery*, Woodhouse J said:[6]

> The word "developer" is not a legal term. It is a word which has been used in this area of the law as a label for a person, or other legal entity, whose involvement in connection with construction of buildings (or in subdivision of land, or both) was such that the person is held by the court to have a duty

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4 See, for example, *Bergin v North Shore City Council* HC Auckland CIV-2006-404-2295, 5 April 2007 at [13] – [15]; *Body Corporate 208191 v Joyce Building Ltd* HC Auckland CIV-2006-404-005373, 16 December 2011; *Keven Investments Ltd v Montgomery* [2012] NZHC 1596, (2012) 14 NZCPR 321.

5 *Body Corporate No 187820 v Auckland City Council* (2005) 6 NZCPR 536 (HC).

6 *Keven Investments Ltd v Montgomery* [2012] NZHC 1596, (2012) 14 NZCPR 321 at [14] (footnotes omitted).

> of care to people who purchase one of the buildings, whether from the person described as the developer or subsequently, even though the physical construction of the building was carried out by an independent contractor. The duty of care in such circumstances is said to be non-delegable; the person labelled the "developer" is not able to delegate the duty of care to the builder.

[59] KNZ's most recent statement of defence is dated 26 June 2015 and includes admissions that:

(a) It purchased the Property in July 2003.

(b) It engaged ADC Architects to prepare designs and specifications for the building work necessary to construct the Building.

(c) It engaged Contrado Limited as the project manager to oversee the work undertaken by Multiplex.

[60] KNZ entered into the Contract with Multiplex. Clearly, it sold the apartments in the Building with the intention of making a profit.

[61] I am satisfied KNZ was the developer of the Building. It therefore owed subsequent owners the non-delegable duty of care as described by the Court of Appeal in *Mt Albert Borough Council v Johnson*.

Breach

[62] I am satisfied that in breach of its duty of care, KNZ failed to ensure that the Building was constructed in accordance with the Building Code.

Cracking to Eterpanel cladding system

[63] As set out in the evidence of the plaintiffs' expert, Mr Lim, the Eterpanel cladding system did not allow for the movement in the sheets caused by thermal and moisture effects and differential movement between the aluminium rails and the cladding sheet.

[64] This lack of allowance for movement resulted in extensive cracking of the fibre cement sheets on the Eterpanel system and breaches of cls B1 (Structure) and B2 (Durability) of the Building Code.

[65] KNZ breached its duty of care in that it failed to ensure there was verification the Eterpanel cladding system to be used on the Building would comply with the aspects of cls B1 of the Building Code relating to thermal, moisture and differential movement.

Balconies

[66] As set out in Mr Franceschini's evidence, the Asaphonic tile adhesive and Dampfix 3 waterproofing membranes on the balconies were incompatible in that the solvents in the Asaphonic (phthalate plasticiser and xylene) were able to migrate into the Dampfix 3 causing it to deteriorate in breach of cl B1 of the Building Code.

[67] KNZ breached its duty of care in that it failed to ensure that the products specified in the building consent documents were used on the balconies.[7]

[68] The consented documents provided various options for waterproofing the balconies, including the Asaphonic tile adhesive with the Dampfix PU waterproofing membrane. Mr Franceschini says it is likely this combination would not have caused any adverse reaction due to the compatibility of these products. There is no suggestion that any of the other product options in the consent would have been problematic.

[69] Therefore, KNZ's breach is causative of the failure of the balcony waterproofing.

Podium

[70] I accept Mr Paykel's evidence as to the defective installation of the waterproofing membrane to the podium.

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7 *Findlay v Auckland City Council* HC Auckland CIV-2009-404-6497, 16 September 2010 at [33]-[34]; see also Building Act 1991, ss 32(1) and 80(1)(a)..

[71] This has allowed moisture to migrate into the carpark causing damage to the plasterboard wall linings and undue dampness in the carparks in breach of cls E2 and B2 of the Building Code.

[72] KNZ breached its duty of care in that it failed to identify missing details in the plans and it failed to ensure that the podium membrane was installed in accordance with the building consent and good trade practice. As a result it was constructed with the defects identified by Mr Paykel.

Fire defects

[73] I accept Mr Merryweather's evidence of the widespread passive fire (fire stopping) defects at the Building.

[74] KNZ breached its duty of care in that it failed to ensure that the fire stopping was undertaken in accordance with cl C3 of the Building Code (being the applicable code provision at the time of construction).

Affirmative defences

[75] In its amended statement of defence dated 8 May 2013 KNZ pleads both a six year limitation defence and contributory negligence on the basis that the defects were apparent before 18 October 2006, being six years prior to the issue of the Court proceedings.

[76] I accept the plaintiffs' submissions that there is no evidence to support these defences and they are therefore without any basis. I therefore dismiss them.

CLAIM AGAINST MULTIPLEX

Nature of duty of care

[77] In *Bowen v Paramount Builders (Hamilton) Ltd*, the Court of Appeal held that English law had developed so that "contractors, architects and engineers are all subject to a duty to use reasonable care to prevent damage to persons whom they

should reasonably expect to be affected by their work".[8] This has been taken to impose a duty of care on builders,[9] as contractors or in a personal capacity.

[78] In *Invercargill City Council v Hamlin* the Privy Council endorsed the approach taken by New Zealand Courts in imposing tortious duties on builders and local authorities, stating:[10]

> In a succession of cases in New Zealand over the last 20 years it has been decided that community standards and expectations demand the imposition of a duty of care on local authorities and builders alike to ensure compliance with local bylaws.

[79] In subsequent cases, it has been held that a head contractor, as builder, has a non-delegable duty of care.[11] The High Court held in *Kilham Mews* that there can be more than one person sitting at the centre of and directing the project and being responsible for the outcome on the basis of a non delegable duty of care. [12]

[80] Where a principal owes a non-delegable duty of care they will also be liable for breaches by independent contractors they have hired.[13] A head contractor who had a primary duty of care would, therefore, be liable for the acts of sub-contractors.

[81] In *Gardiner v Howley*, Temm J found the appellants, who had built themselves a house using contractors, and then sold it to the respondents, could only be liable in negligence due to the factual finding they were "head contractors".[14] As head contractors, not simply vendors, they had controlled and supervised the build therefore they could be liable in tort.

[82] There are two ways in which Multiplex's liability may arise:

(a) as a result of the non-delegable duty, akin to that of a developer; or

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8 *Bowen v Paramount Builders (Hamilton) Ltd* [1977] 1 NZLR 394 (CA) at 406.
9 *Minister of Education v Econicorp Holdings Ltd* [2011] NZCA 450, [2012] 1 NZLR 36 at [55].
10 *Invercargill City Council v Hamlin* [1996] 1 NZLR 513 (PC) at 521.
11 See for example *Carrington v Easton* [2013] NZHC 2023 and *Lee v Ryang* HC Auckland CIV-2011-404-2779, 28 September 2011.
12 *Body Corporate 185960 v North Shore City Council* HC Auckland CIV-2006-004-3535, 28 April 2009 [*Kilham Mews*].
13 *Cashfield House Ltd v David and Heather Sinclair Ltd* [1995] 1 NZLR 452 (HC) at 463-464.
14 *Gardiner v Howley* (1995) ANZ ConvR 521 (HC).

(b) independently for its own actions and omissions.

Responsibilities

[83] On 1 November 2003 Multiplex entered into the Contract with the developer to "design, construct, complete, deliver and remedy defects" in the works described in the Contract.

[84] The Contract included Special Conditions, the General Conditions of Contract NZS 3910:1998 and Amendments to the General Conditions. Clause 5.1.5 of the Special Conditions required Multiplex to exercise reasonable skill, care and diligence in the construction. The General Conditions provided at cl 5.2.1 that Multiplex was to "provide all necessary supervision during the contract" and "all work shall be carried out under the supervision of the Contractor's representative".

[85] Multiplex engaged various consultants to provide specialist design services. Multiplex engaged, amongst others, Beca Carter Hollings & Ferner Limited (Beca) to report on the fire engineering design and provide observations and PBS Contracting Limited (PBS) to supply and install the cladding systems. PBS in turn engaged Facade Design Services Limited (FDS) to provide designs for the cladding systems.

[86] Multiplex was solely in control of the aspects of design and construction in respect of which the defects occurred.

[87] In late 2003, Multiplex made the stage two and three building consent applications on behalf of the developer, the stage three works being the subject of the claims relating to defects in this proceeding.

[88] In the period from July 2003 until May 2005, Multiplex and its subcontractors constructed the Building. On 21 April 2005 Multiplex issued a producer statement to the Council in respect of the building work under the stage three building consent, and on 17 May 2005, the Council issued the CCC.

[89] Given its role, as described, I am satisfied Multiplex owed a non-delegable duty of care in respect of the defects.

[90] Furthermore, it is clear that, as head contractor, Multiplex is responsible if it acted or omitted to act in such a way that its own negligence caused the plaintiffs' loss. A recent example of such a case is *Nautilus* wherein Brookfield Multiplex was found liable for the creation and existence of all defects within the building despite not having designed or built any of them itself. [15]

Breach

Cracking to Eterpanel cladding system

[91] I accept the evidence of Mr Jordan that a prudent head contractor in the circumstances would have:

(a) reviewed the designs for the Eterpanel cladding system, the Ronald Hanley producer statement (design) and WEC testing;

(b) recognised that there had been no review of the Eterpanel cladding system by an independent facade designer;

(c) identified that the WEC reports did not test for moisture and thermal movement of the cladding sheets or for durability and therefore did not verify compliance with cls B1 and B2 of the Building Code; and

(d) identified that there was no verification the WEC testing was relevant to the proposed fixing methods for the Eterpanel system on the Building.

[92] In these circumstances, Multiplex should have recognised that the proposed Eterpanel cladding system was not verified as complying with the Building Code. Multiplex breached its duty of care by applying for building consent for and installing this cladding system.

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15 *Body Corporate 326421 v Auckland Council* [2015] NZHC 862 [*Nautilus*].

Balconies

[93] Multiplex was to supervise all of the building work.

[94] I accept Mr Jordan's evidence that a prudent head contractor would have checked that the waterproofing products being used on the balconies were in accordance with the requirements of the building consent. Multiplex should have identified that the combination of Asaphonic and Dampfix 3 was not in accordance with the waterproofing options approved in the building consent.[16]

[95] Multiplex failed to identify that the waterproofing products installed on the balconies were not in accordance with the building consent. Alternatively, it was aware of this fact and allowed the Asaphonic and Dampfix 3 to be installed regardless. I accept the submission that, either way, Multiplex was in breach of its duty of care.

Podium

[96] I accept Mr Jordan's evidence that a prudent head contractor would have:

(a) identified the deficiencies (missing details) in the designs for the podium waterproofing; and

(b) identified the membrane installation defects described by Mr Paykel.

[97] In breach of its duty of care Multiplex installed the podium waterproofing with the defects identified by Mr Paykel.

Fire defects

[98] I accept Mr Jordan's evidence that a prudent head contractor would have:

(a) identified the design deficiencies (missing details) referred to in his evidence; and

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[16] *See Findlay Family Trust v Auckland City Council & Anor* HC AK CIV-2009-404-6497 [16 September 2010] at [33]-[34]; see also sections 32(1), 80(1)(a) of Building Act 1991.

(b) identified all of the fire stopping defects in the course of its supervision of the construction work.

[99] In breach of its duty of care Multiplex allowed the fire stopping to be undertaken in a defective manner as described by Mr Merryweather in his evidence.

QUANTUM

Claim for remedial work costs

[100] Peter Moore of Maynard Marks describes the remedial works which are required as a result of the four defects and the procurement process by which the contractor, Teak Construction, has provided a tender for the remedial works to the Body Corporate.

[101] In his affidavit, the plaintiffs' quantity surveyor, John Grant Ewen, summarises his estimates of the cost of the remedial works based on the Teak tender. His estimate of the cost of the remedial work costs was:

(a) Build cost $42,227,919

Comprising:

(i) Teak tender $26,052,635;

(ii) Provisional sums $3,487,250;

(iii) Contingency $1,477,000;

(iv) Insurance $195,000;

(v) Escalation $3,614,170;

(vi) GST $5,223,908;

(vii) Consultants $1,825,221;

(viii)	Section 74 scheme	$60,290;	
(ix)	Body Corp Admin	$102,000;	
(x)	Council fees	$175,000;	
(xi)	Temporary repairs	$15,445;	
(b)	Less non-claiming units		$958,765.
(c)	**Total**		**$41,269,154**

Consequential losses

[102] I accept the evidence that the plaintiffs will suffer consequential losses arising from the remedial works comprising loss of rental income, costs of alternative accommodation, moving, storage and cleaning.

[103] The plaintiffs' valuer, Stephen Mackisack, calculated these losses to be $7,406,798 as at the date of his first brief of evidence served in March 2016 with an increase of five per cent increase to take into account the anticipated start date of the remedial works in April 2017. This was adjusted, after discussion with the Council's valuer, Mr Gamby, to $7,303,284.45. A five per cent increase takes this figure to $7,668,448.70.

General damages

Approach

[104] General damages are a form of compensatory damages. They compensate for losses that cannot be objectively quantified in monetary terms. They cover, for example, pain and suffering, indignity and humiliation and mental distress. *Todd on Tort* explains:[17]

> Mental suffering that is insufficiently severe or permanent to qualify as a recognisable psychiatric illness may be compensated by an award of general

[17] Todd (ed) *The Law of Torts in New Zealand* (online edition, Thomson Reuters) at [25.2.09].

> damages if it is a consequence of other actionable damage that makes the tort complete, or the claim is brought under a tort that is complete without proof of actual damage.

[105] *McGregor on Damages* provides a more in depth analysis on the heads under which general damages can be awarded.[18] However, this focuses on UK law which is arguably narrower than New Zealand law.[19] It identifies four heads of damages: pain and suffering and loss of amenity;[20] physical inconvenience and discomfort, mental distress, and social discredit.[21]

[106] Where the cause of action is in negligence, general damages will be available for distress, vexation, inconvenience and the like if reasonably foreseeable consequences of the breach of duty.[22] As Richardson J noted:[23]

> ... where there is a duty of care to the plaintiff, the scope of the damages recoverable is essentially a question of remoteness of damage which turns on whether the particular harm was a reasonably foreseeable consequence of the particular breaches of duty which have been established.

[107] There are public policy concerns that may preclude general damages. As explained by Cooke P:[24]

> The Courts have stopped short of giving stress damages for breach of ordinary commercial contracts. Such damages may be foreseeable, but I think that the restriction may be seen as justified by policy. Stress is an ordinary incident of commercial or professional life. Ordinary commercial contracts are not intended to shelter the parties from anxiety. By contrast one of the very purposes of imposing duties on professional persons to take reasonable care to safeguard the interests of their clients is to enable the clients to have justified faith in them. In my view an award of stress damages to the present appellant was well warranted, whether in tort or in contract or as equitable compensation. This does not mean that a commercial client could necessarily recover such damages. No discussion of that question is called for.

[108] Therefore, in order to claim general damages a claimant must first have suffered a certain type of damage. Secondly, the consequences must have been

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18 Harvey McGregor *McGregor on Damages* (19th ed, Sweet & Maxwell, London, 2014) at [5-002] – [5-014].

19 *Mouat v Clark Boyce (No 2)* [1992] 2 NZLR 559 (CA) at 569 per Cooke P.

20 Referring to physical pain and suffering, these are sometimes classified as separate heads.

21 This applies in cases involving damage to ones reputation, such as defamation proceedings.

22 *Mouat v Clark Boyce* above n 20 at 568 per Cooke P.

23 At 573.

24 At 569.

reasonably foreseeable. Thirdly, there must not be any public policy concerns which prevent the claimant from recovering.

[109] The unit owners' evidence reveals the main impact on them has been financial, with associated stress. While some reported mould growing in their apartments,[25] and the impact of the level of stress had been severe on others, the primary concern was the ongoing financial impact of the defects. The unit owners have clearly suffered some level of stress and anxiety giving rise to a claim of general damages.

[110] Unit owners who are companies cannot claim general damages as a company does not suffer mental distress.[26] A number of units in this case are held by trustees on behalf of a trust. Unlike a company, a trust is not a separate legal entity.[27] Trust property is legally owned by the trustees, rather than the trust itself. Baragwanath J in *Byron Avenue* held that where trustees occupy property or have a personal economic interest in it, they have standing to bring an action claiming general damages for their stress and anxiety because they are the owners of the property.[28] This is an issue in respect of units 4A, 13J, 14E and 14G and unit 7E where the entitlement to general damages is on the following basis:

(a) Units 4A, 13J, 14E and 14G – Jacqueline Turner as trustee of the Jaytee Trust is entitled to general damages as a single owner occupier as she lives in unit 14E. The trustees of the Huntington Family Trust are not entitled to general damages as they are professional trustees and have no personal economic interest in the units.

(b) Unit 7E – the trustees of the Turner Family Trust are entitled to general damages as more than one non-occupier owners on the basis they have a personal economic interest in the unit. They are non-occupiers as their son and flatmates are renting the unit.

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25 Refer [44] above.

26 *McGregor on Damages* above n 19 at [5-014] and *O'Hagan v Body Corporate 189855* [2010] NZCA 65, [2010] 3 NZLR 486 at [153] [*Byron Avenue*] at [125] and [153](a).

27 *NZHB Holdings Ltd v Bartells* (2004) 5 NZCPR 506 (HC) as cited in *Byron Avenue*.

28 At [49].

[111] Arguably, there are public policy concerns with non-resident (investor) owners claiming general damages as they are similar to the parties to commercial contracts discussed by Cooke P in *Mouat v Clark Boyce* above. Stress is an ordinary incident of commercial or professional life. However, it has been accepted in a number of cases that investors can claim for general damages in these situations.[29]

Quantum

[112] General damages for "leaky homes" negligence claimants have typically been granted in accordance with the amounts given by the Court of Appeal in *Byron Avenue*. The Court of Appeal there set the relevant awards at $25,000 per unit to owner-occupiers, $15,000 to non-resident owners and double non-resident owners to $25,000.[30]

[113] The plaintiff says the inflation since the Court of Appeal's judgment should be taken into account, alongside the very high losses faced by the owners. It says that in *Byron Avenue* there were no "double resident owners" claiming before the Court of Appeal, and that it can be assumed that a similar proportionate increase may apply to the amount to which they are entitled. It claims general damages of $30,000 for resident owners, $40,000 for double resident owners and $20,000 and $30,000 for single and multiple non-resident owners respectively.

[114] The Council says these claims are too high, and refers to the fact the defects in this case are not in fact "leaky buildings" in the classic sense, with attendant health problems.

[115] In relation to the question of inflation, the judgment dates from 2010 so it is relatively recent. The question of inflation is valid, but would essentially require revisiting the Court of Appeal's judgment. In *Byron Avenue* itself, the Court of Appeal did apply inflationary analysis to the damages awards made in *Mouat v Clark*

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29 See for example *Byron Avenue* above n 26.

30 At [153] note there was some confusion in the amounts awarded following the judgment. William Young P did not consider that double non-resident owners should receive any additional amount. Arnold J agreed with him, making this the majority judgment. However, the Court issued a minute following the judgment which stated that it was the figures used by Baragwanath J that were to be applied: *North Shore City Council v Body Corporate 189855* [2010] NZCA 235. See also *Todd on Torts* above n 22 at [25.2.09]

Boyce (supra) and *Bronlund v Thames Coromandel District Council*,[31] but did not directly apply the adjusted figures to leaky buildings claims, presumably because of the distinct context of leaky buildings claims.[32]

[116] In *Johnson v Auckland Council*, the Court of Appeal considered submissions about general damages and the impact of inflation since *Byron Avenue*.[33] The Court rejected a tariff style-analysis, seeing the assessment as one related to the personal circumstances of the plaintiff:

> [119] The awards of general damages vary. Baragwanath J in his judgment in *Byron Avenue* referred to the award of $20,000 in this Court in *Bronlund v Thames Coromandel District Council*. Baragwanath J also referred to a number of High Court decisions where awards ranged from $6,000 to $25,000. His Honour noted that the facts of these cases "vary considerably" but "generally entailed occupancy of a leaky building for a significant period and the associated anxiety". William Young P recorded his agreement with Baragwanath J that *Byron Avenue* was not an ideal case for general guidance to be given about appropriate levels of compensation for non-economic loss in leaky homes cases. However, William Young P said he supported awards for non-economic loss in that case which proceeded on the basis that there would be no awards for corporate owners, $15,000 as an appropriate figure per unit for non-occupiers and $25,000 as an appropriate figure per unit for occupiers. William Young P also observed that, as Baragwanath J had pointed out, "not all the claims can be neatly categorised in this way and some evaluative assessment may be required".
>
> ...
>
> [121] Further, this is an area where, as Baragwanath J states, a trial judge is well placed to make an assessment of the degree of stress experienced by the plaintiffs.

[117] The Court upheld the decision of Woodhouse J that the personal circumstances of the plaintiffs warranted $10,000 in general damages, as by comparison with other leaky building cases, the plaintiffs were not living in the house and were not forced to live in a leaky house.[34] It is clear that a tariff style analysis, with adjustments for inflation, was not considered appropriate by the Court. A holistic assessment of the impact on the individual claiming general damages was necessary, despite the general guidance provided by *Byron Avenue*. I agree with that approach.

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31 *Bronlund v Thames Coromandel District Council* CA190/98, 26 August 1999.
32 At [126].
33 *Johnson v Auckland Council* [2013] NZCA 662.
34 At [118]–[120].

[118] In *Weaver v HML Nominees Ltd*, Katz J held that the extent of general damages would be reduced from the leaky building range where the impact on the plaintiffs was primarily from the litigation itself, and there were no adverse health impacts.[35] She said:

> [180] I am satisfied that an award of general damages is appropriate in this case. It must necessarily reflect, however, that the only significant defect I have found either HML Nominees or the Council liable in respect of is the failure of the stone cladding. Accordingly any stress associated with other building works, such as the significant work undertaken to the main entrance of the property, does not sound in damages. Nor is a damages award appropriate for the stress of the litigation, which from Mr Anderson's evidence was clearly a major factor. I also note that this is not in fact a leaky building case, although it arises out of repairs to a previously leaky building. There was no suggestion of water ingress through the stone cladding causing damp, mould or unhealthy living conditions. Any damage was external only and the re-clad did not require the plaintiffs to move out of the property.
>
> [181] Taking all of these matters into account I am satisfied that an award of $20,000 in respect of general damages is appropriate. In terms of relative culpability this should be borne equally between HML Nominees and the Council and I accordingly award $10,000 in general damages against each of those parties.

[119] Katz J was not purporting to make a general finding about the level of appropriate general damages. However, her judgment did recognise that the extent of general damages reflects the effect of the negligence on the plaintiff, and that the health effects of leaky buildings are a serious part of that.

[120] As discussed above, the main impact suffered by the unit owners in this case has been financial with associated stress.[36] By contrast with the state of affairs described by Baragwanath J in *Bronlund* (also used as a comparator in *Johnson*), the plaintiffs in this case have not been required to live in an uncompleted house with actual leaks causing health risks.[37] The damage to the plaintiffs' apartments has not, for the most part, caused any actual health risks to the occupants. This was noted by Katz J as a factor in awarding slightly lower than the "standard" amount ($20,000 compared to $25,000).

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35 *Weaver v HML Nominees Ltd* [2015] NZHC 2080.

36 Refer [109] above.

37 See *Johnson v Auckland Council*, above n 33, at [120], citing *Bronlund v Thames Coromandel District Council* above n 31.

[121] However, in *Weaver v HML Nominees* the plaintiff was not forced to relocate at any stage, including when repair work was carried out. Here, the repair work will in fact require all those living in the apartments to relocate which will clearly cause great inconvenience and stress to those individuals.

[122] In my assessment, the claims for general damages are of slightly less severity than the traditional leaky building cases, given the lack of health risk. However, the overall effect on the plaintiffs is still significant. There have been considerable effects on the individual owners' personal relationships, levels of anxiety and stress, and some health effects on individuals. I am satisfied it is appropriate to make an award generally in accordance with *Byron Avenue*.

[123] The plaintiffs correctly say that in *Byron Avenue* there were no joint resident owners. They submit that it could be assumed, given the increase for more than one non-resident owners, a similar proportionate increase may apply to more than one resident owner. Baragwanath J awarded $15,000 to non-resident owners and $25,000 to non-resident owners "where the burden is shared".[38] Therefore, he appeared to accept there will be greater stress when more than one owners share the burden.

[124] William Young P awarded $15,000 to non-occupier owners on a per unit basis and did not increase this when there was more than one owner. Arnold J said he agreed with William Young P. However, there was some confusion over the amount the plaintiffs were awarded and the Court issued a minute stating "for the avoidance of doubt, the orders of Baragwanath J are the orders of the Court". Therefore the reasoning of Baragwanath J was applied.

[125] I accept joint owners are entitled to more than single owners. The underlying principle is that general damages are awarded to compensate for mental distress and other non-quantifiable consequences of a breach of duty. If there are two owners, they are both suffering this stress and should both be entitled to compensation. Therefore they should be entitled to more than a person who owns the unit on their own.

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38 *Byron Avenue* above n 26 at [129].

[126] A further, separate issue is whether owners of more than one unit should be entitled to greater general damages. This was not considered by the Court of Appeal in *Byron Avenue*. It has been expressly rejected by the High Court on two occasions.[39] I concur with the reasoning and conclusion of those decisions.

[127] I therefore award general damages of $25,000 for single resident owners, $35,000 for joint resident owners, $15,000 for single non-resident owners and $25,000 for joint non-resident owners. Therefore, the total amount of general damages is $3,320,000.

GST

[128] The Body Corporate claims the cost of repairing common property whilst the unit owners claim the cost of repairing unit property.

Unit owners

[129] The plaintiffs' taxation expert, Graeme Carruthers, gave evidence that damages awarded to the unit owners should be on a GST inclusive basis. This reflects the fact that the unit owners will be levied by the Body Corporate for unit property repairs on a GST inclusive basis and they are unable to recover the GST as they are not carrying on a taxable activity.[40]

Body Corporate

[130] Mr Carruthers' evidence was that the damages awarded to the Body Corporate should be calculated on a GST exclusive basis, provided that the damages were awarded to the Body Corporate in its own right and not as agent for the owners and are not being paid by insurers. If the damages awarded to the Body Corporate are as agent for its members, the award would effectively be directly to the owners and GST would need to be included.

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39 *Nautilus* above n 20 at [290] and *Body Corporate 183523 v Tony Tay & Associates Ltd* HC Auckland, CIV-2004-404-4824, 30 March 2009.

40 I am aware that the Council had intended to call expert evidence to address this issue in support of the proposition that it would be the Body Corporate itself which would be party to any building contract for remedial works and therefore the Body Corporate could claim back GST. However, no evidence was provided on this point and I therefore accept the plaintiffs' evidence.

[131] In claims brought prior to the Unit Titles Act 2010, bodies corporate claimed as agent for members in respect of repairs to common property as the common property was owned by the owners as tenants in common.[41] However, under the new Act, common property is vested in bodies corporate.[42]

[132] In these circumstances, the duty owed by the defendants in respect of the common property is owed to the Body Corporate direct as is the case with any other subsequent owners of property and therefore the award to the Body Corporate is on a GST exclusive basis. [43]

Interest

[133] The plaintiffs claim interest on expenditure to date at the Judicature Act 1908 rate of five per cent per annum. A schedule of interest to 5 December 2016 was provided in the affidavit of John Ewen. This totals $106,189.

Award to Body Corporate

[134] Mr Ewen calculated that 94 per cent of the cost of repairing the Teak relates to unit property and six per cent relates to common property.

[135] The award sought by the Body Corporate against each of the first and second defendants is therefore:

(a) Remedial work costs (six per cent): $2,126,194.42;[44] and

(b) Interest on expenditure (six per cent): $6,371.34.

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41 See *Body Corporate 1898555 v North Shore City Council* HC Auckland CIV-2005-404-5561, 25 July 2008 at [69] and [368] – [369].

42 Unit Titles Act 2010, ss 54, 219 and 223.

43 See *North Shore City Council v Body Corporate 188529* [2010] NZSC 158, [2011] 2 NZLR 289 [*Sunset Terraces*].

44 GST has been removed from the $2,445,123.58.

Award to unit owners

[136] The awards made to each of the second plaintiffs are set out in sch 1 annexed. This includes the unit owners' share of the balance of the remedial work costs, the consequential losses, general damages and the balance of the interest on expenditure.

Settlement

[137] The plaintiffs say the settlement it has reached with some of the defendants will be taken into account in any recovery action taken, however, it does not limit the damages that may be claimed against KNZ and Multiplex.[45] This is on the basis that the plaintiffs cannot recover more than their loss but seek judgment without reference to the settlement. This approach has been followed in other cases on the basis that recovery of damages is an enforcement issue, different from entering judgment.

[138] Since the settlement has occurred, the plaintiffs cannot recover from KNZ and Multiplex an amount which would cause them to recover more than the total judgment sum.

Costs

Legal costs

[139] The plaintiffs claim costs against KNZ and Multiplex.

[140] The plaintiffs claim for the costs set out in sch 2 to counsel's submissions. The costs category is two. In view the size and complexity of the claim, I accept band C is appropriate for all costs other than relating to the case management conferences. The plaintiffs do not claim for the trial time (as KNZ and Multiplex did not attend trial) but do claim in respect of the "formal proof" hearing (including preparation time). The total claim for costs is $283,096.

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[45] *Kilham Mews* above n 16; and *Body Corporate 199348 v Nielsen* HC Auckland CIV-2004-404-3989, 3 December 2008.

[141] Multiplex seeks that any judgment for costs against it should take into account the limited involvement it has had in the proceeding. The vast majority of costs have been incurred in relation to claims against other defendants.

[142] The plaintiffs say all costs may be claimed against both KNZ and Multiplex irrespective of the part either of those parties played in the proceedings. They refer to r 14.14 of the High Court Rules which provides that liability for costs is joint and several unless the Court directs otherwise. The presumption is entirely appropriate in a case concerning joint tortfeasors and arguably steps taken by other defendants were of benefit to KNZ and Multiplex.

[143] Costs are awarded to the plaintiffs in the sum sought.

Disbursements

[144] The plaintiffs claim disbursements in accordance with r 14.12 of the High Court Rules. The disbursements claimed, which mainly comprise expert witness costs, total $803,155.[46]

CROSS CLAIMS

Issues

[145] The Council has settled with the plaintiffs and now seeks judgment on its cross-claim against KNZ and Multiplex. The cross-claim is on the basis that KNZ and Multiplex have caused or contributed to the plaintiffs' losses and the Council is entitled to indemnity and/or contribution from KNZ and Multiplex pursuant to the common law and/or s 17(1)(c) of the Law Reform Act 1936.

[146] In order for the court to enter judgment on the Council's cross-claim the following issues require consideration:

(a) Are KNZ and Multiplex liable to the plaintiffs, and if so, are KNZ and Multiplex liable for the same damage as is the Council?

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[46] Disbursements relating to the trial have been removed from the claim.

(b) What should the apportionment of liability be?

(c) What amount ought to be awarded in judgment?

Liability

[147] The Council relies on the affidavits provided by both the plaintiffs and the Council. I have already found both KNZ and Multiplex liable to the plaintiffs. It is, however, appropriate to refer to the affidavit evidence filed on behalf of the Council, not only as confirmation of the decision on liability, but also as it is important to the issue of apportionment of liability.

[148] The Council's evidence came from Clinton Smith, a registered building surveyor and building consultant, Noel Flay, a qualified carpenter, experienced council official and former building inspector, now working as a building consultant, and Sarah Hann, a senior solicitor employed by the Council.

[149] Mr Smith noted that, while the experts engaged on behalf of the plaintiffs and those engaged on behalf of the Council disagreed as to the extent of defects in the Building, all experts agreed there are defects which require remediation. The defects affect the balconies, exterior cladding, podium and passive fire safety measures within the Building.

[150] Mr Smith emphasised the responsibility of KNZ, as developer, to ensure that the building works complied with the Building Code both as the applicant for the consent and as the developer. He discussed the responsibilities of Multiplex under the Contract noting in particular that Multiplex was responsible for:

(a) deciding which type of cladding would be installed on the Building and this was different from the original concept adopted by the Architect;

(b) selecting the product combination which was installed on the balconies and which was other than consented;

(c) installing a product on the podium which was other than identified at the time of application for consent; and

(d) supervising the building works under the terms of the Contract.

[151] In addition, Multiplex was responsible for overseeing the installation of the building works and providing a producer statement to the Council before the issuing of the CCC.

[152] Mr Flay's evidence was that, based on his experience, the following considerations should be taken into account in determining the respective responsibilities between the Council, KNZ and Multiplex:

(a) KNZ as owner and developer of the Property held the principal responsibility to ensure that any building work was carried out in compliance with the Building Code.

(b) Having been engaged under a design and build contract, Multiplex was responsible for any design aspects of the building works and as head contractor, for ensuring that all building works were completed to a Building Code compliant standard.

(c) Multiplex had far more control of the design and build phases of the building works than the Council, having experience working with the products and typically having carried out a more thorough investigation than the Council would have done as to the suitability of the use of various products.

(d) Multiplex would have had personnel present on site for far longer than the Council would. The Council would have been onsite only at various points of time.

(e) Multiplex was responsible for "calling" the Council for inspections. Multiplex had the power to identify at what points in time the Council was permitted to come on site to inspect certain building elements.

(f) Multiplex had the ability to advise the Council, or not to advise it, of any changes in the design from that consented.

(g) Multiplex provided the Council with a producer statement in order for the Council to issue a CCC.

[153] It is clear that KNZ, Multiplex and the Council share liability for the same damage and are correctly described as concurrent tortfeasors.[47]

[154] Ms Hann as a senior solicitor for the Council was responsible for defending the plaintiff's claim against the Council. Her evidence detailed the legal and expert advice which underpinned the Council's decision to settle the claim (the Settlement).

Apportionment

Law

[155] Multiplex says the generally accepted apportionment of responsibility between a builder and a council is 80 per cent responsibility to the builder, and 20 per cent to the Council. It says nothing about this case warrants a different approach.

[156] The Council says there is no fixed rule, other than that the regulator's liability as a secondary tortfeasor will be less than the primary tortfeasor. It says typical cases have apportioned liability to the Council at between five and 25 per cent.

[157] In *Mount Albert Borough Council v Johnson*, the plaintiffs who were owners of flats brought a claim against the developer, engineer and council, alleging those parties failed to ensure the foundations to the flats went down to solid ground. The Court held that it was the builder's responsibility under the by-law to go down to solid ground. The builder was the party primarily liable. Liability was apportioned 80 per cent to the builder and 20 per cent to the Council.[48] *Todd on Torts* refers to this as being the accepted allocation of responsibility where the owner of a defective

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47 As discussed later, had the matter gone to a full trial, the Council might not have been held to share liability for *all* of the same damage.

48 *Mount Albert Borough Council v Johnson* [1979] 2 NZLR 234 (CA) at 241.

building sues both the builder and the local authority.[49] This is referred to as a guideline, although the ultimate question of allocation of responsibility is a question of what is just and equitable.[50] The Court must have regard to "comparative causative potency of the respective negligence and the comparative culpability or blameworthiness of the defendants".[51]

[158] In 1985 in *Morton*[52] the plaintiffs brought a claim against the developer, engineer and council for a failure to ensure that the piles to their flats, which were located on an old shingle pit, went down to solid ground. The court apportioned responsibility in respect of two of the plaintiffs in the proportions of 85 per cent to the developer and its principal and 15 per cent to the council. In respect of the remaining plaintiffs the court apportioned 55 per cent of the responsibility to the developer and its principal, 35 per cent to the engineer and 10 per cent to the council.

[159] In 1994 in *Scott*,[53] the plaintiffs brought a claim against two engineers and a council relating to the failure of a retaining wall. Liability was apportioned to the design and supervising engineer at a level of 60 per cent, the second engineer at 25 per cent and the council at 15 per cent.

[160] In *Nautilus*, Gilbert J apportioned 80 per cent of the liability to the builder and 20 per cent to the council in respect of a particular aspect for which the builder was liable, stating this apportionment was consistent with a number of comparable cases.[54]

[161] In *Body Corporate 160361 v BC 2004 Ltd*, Whata J referred to *Todd on Torts* as to the "accepted" allocation, but said that in the circumstances of the case, that allocation did not reflect the relative responsibility between the negligent parties.[55]

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49 *Todd* above n 22 at [24.3.05].
50 Law Reform Act 1936, s 17(2).
51 *Nautilus* above n 20 at [320].
52 *Morton v Douglas Homes* [1984] 2 NZLR 548.
53 *Scott v DC Parsons & Ors* HC Auckland, *CP776/90,* 19 September 1994.
54 *Nautilus* above n 20 at [324], citing *Body Corporate 160361 v Auckland City Council* HC Auckland CIV-2003-404-6306, 25 June 2007; *Body Corporate 189855 v North Shore City Council* [2008] BCL 800 (HC); and *Body Corporate 185960 v North Shore City Council* HC Auckland CIV-2006-404-3535, 22 December 2008.
55 *Body Corporate 160361 v BC 2004 Ltd* [2015] NZHC 1803.

Weathertight Homes Tribunal

[162] In 2009 in *Chapman*,[56] the claimants brought a claim against a building company, its director, the council, a labour contractor, a plasterer and others. The claimants established that there were weathertightness defects in their homes. The Tribunal attributed liability to the council at a level of 10 per cent with 70 per cent liability attributed to the building company, 10 per cent to the labour only contractor and 10 per cent to the plasterer.

[163] In *McAneney* the claimant bought a claim against the developer, the council and the vendors of the house which had weathertightness defects. [57] The claimants settled with the council and vendors but continued with their claim against the developer. The council also continued to pursue its cross claim against the developer for contribution. The Tribunal apportioned 15 per cent of liability to the council allowing it to recover 85 per cent from the developer.

[164] In *Engela* the claimants brought a claim against the council, the developer, its directors and the project manager. [58] The council consented to judgment being entered against it for the full sum but requested that the tribunal order contribution on its cross claim of 90 per cent of liability from the developer and the directors. The Tribunal apportioned 10 per cent of liability to the council and granted its application for contribution.

Application

[165] Mr Broadmore, for Multiplex, submitted that given the various cases, the relative blameworthiness of Multiplex should not be more than 80 per cent.

[166] The Council submitted it was important to have reference to the particular facts in this case when apportioning liability between KNZ, Multiplex and the Council and that liability ought to be apportioned to both KNZ and Multiplex at the level of 90 per cent for the following reasons:

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56 *Chapman v Western Bay of Plenty District Council* TRI-2008-101-1 00, 11 November 2009.
57 *McAneney v Auckland Council*[2011] NZWHT Auckland 63.
58 *Engela South Trustee Ltd v Auckland Council* [2013] NZWHT Auckland 12.

(a) Multiplex was responsible for making the design decision as to the use of the cladding. As an international building company it was far better equipped to determine whether there was sufficient information available to indicate that the cladding system would remain compliant with cls B1 and B2 of the Building Code. Of note, it was well known that issues had arisen with the use of fibre cement board in Australia where Multiplex maintained a high presence in the industry.

(b) Multiplex was responsible for making the design decision in respect of the combination of products to be used on the balconies. It made that decision at a time when it knew that the consultant had recommended certain combinations and that it was a condition of the consent that those certain combinations be used. Multiplex also elected not to make an application for an amended consent authorising the use of those two products in combination with each other, reducing the opportunity for the Council to query whether the products used in combination with each other would result in compliance with the Building Code. The Council says it can reasonably be inferred that this decision was made in order to expedite the issue of the CCC and save time and cost.

(c) Multiplex was responsible for the implementation and auditing of an on-site quality control system. It had personnel on site on a daily basis. It had control over the assurances which needed to be given by various subcontractors as to the compliance of the building works with the Building Code. It elected when the Council was to come to the site. For that reason, where issues of workmanship arose such as with the installation of the membrane on the podium and the failure to ensure passive fire safety measures were compliant with the Building Code, it was clear that the quality assurance system was either not implemented or was carried out in a negligent manner.

(d) Multiplex provided a specific assurance to the Council that the building works had been completed to Building Code compliant standard.

(e) KNZ was responsible for the actions of Multiplex.

[167] Ms Thodey, for the Council, pointed out that cases which attribute 20 per cent of the liability to a council usually involved small residential buildings where councils tend to have a greater involvement during the building process. In contrast, in this case, an international company was involved in a large complex development.

Conclusion

[168] The apportionment of responsibility requires an analysis of the roles of the parties. It is not simply a matter of adopting apportionments made in other cases. In my assessment, the matters referred to by the Council in support of a 90 per cent attribution of liability to KNZ and Multiplex carry considerable weight. Multiplex has not adduced any evidence as to what facts should influence the apportionment. I accept the Council's submission in respect of the cladding, evidence of problems in Australia was given at the hearing commencing 12 October 2016. In respect of two of the other three defects, the balconies and the podium, it is of particular significance that the relevant works did not comply with the building consents. In the circumstances of this particular case, I assess the appropriate apportionment of liability to be 15 per cent to the Council and 85 per cent to KNZ and Multiplex.

Amount

Reasonableness of the Settlement

[169] I am not aware of any New Zealand authority to the effect that a party such as the Council must establish that the Settlement was a reasonable one.

[170] In 1955 the High Court of Australia in *Bitumen* held that if one tortfeasor has improvidently agreed to pay too large an amount or by unreasonable or negligent conduct in litigation, incurred or submitted to an excessive verdict, that the excess is

due to his fault and not to that of the tortfeasor resisting the claim.[59] This will be a matter for the court to consider under the heading of "just and equitable".

[171] This decision appears has been followed more recently in Australia notably in 1991 by the Supreme Court of South Australia in *Saccardo*.[60]

[172] The Council provided affidavit evidence explaining the rationale for the Settlement and the level at which the Council made payment. Given the factors referred to in the evidence, I accept Ms Thodey's submission there can be no that question that the Settlement was a reasonable one.

Effect of the Settlement

[173] In Mr Broadmore's submission, it would not be just and equitable for Multiplex's total liability to increase as a result of the Settlement. He asked that the amount of any judgment obtained by the plaintiffs against Multiplex be taken into account when determining Multiplex's liability to the Council to contribute to the Settlement amount. In his submission, if Multiplex is required to contribute 85 per cent of the Settlement amount to the Council and also pay the plaintiffs the full amount of their residual losses, Multiplex's liability would be greater than 85 per cent of the plaintiffs' total claim.

[174] Multiplex seeks that either:

(a) any judgment on the Council's cross claim should account for the contribution Multiplex would be entitled to recover from the Council in respect of any judgment the plaintiffs obtain against Multiplex; or

(b) any judgment on the Council's cross claim should be no more than 85 per cent of any judgment for the plaintiffs less any amounts that the plaintiffs are entitled to recover directly from Multiplex.

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59 *Bitumen & Oil Refineries (Australia) Ltd v Commissioner for Government Transport* (1955) 2 CLR 200 at 2.13.

60 *Saccardo Constructions Pty Ltd v Gammon (No, 2)* (1994) 63 SASR 333 (SASC); *Saccardo Constructions Pty Ltd v Gammon* (1991) 56 SASR 552 (SASC).

[175] As to (a), I am not aware of any cross claim by Multiplex against the Council.

[176] Multiplex's concern is that, because the Council has settled with the plaintiffs, it might pay less than its 15 per cent of liability in circumstances where the plaintiffs have obtained a judgment against Multiplex for the full amount of its claim. Multiplex says that if any of its residual liability to the plaintiffs is not taken into account when considering the Council's claim for contribution, Multiplex will be prejudiced by the Settlement. Multiplex maintains any such prejudice does not arise from the manner in which Multiplex conducted the litigation but arises solely as a result of the Settlement. Furthermore that, if the Council is entitled to contribution from Multiplex towards its payment, it must follow that Multiplex and the Council are joint tortfeasors and liable in respect of the same damage.

[177] In the Council's submission, any excess for which Multiplex is found liable is due to its own recklessness in failing to participate in defending the claim rather than reflecting a true apportionment of the total liability as between the Council and Multiplex.

[178] The Council submits the plea for a reduction in the apportionment must be considered in light of the following facts:

(a) The Court has no information before it as to whether the Council would be liable for all of the defects now said to exist in the Building and the losses which flow from them. There is no claim, evidence, or any submission that the Council would necessarily be concurrently liable with Multiplex for all of those same losses. For example, there is no evidence that the Council is culpable along with Multiplex for the issues which have arisen in respect of the defects in the passive fire safety measures in the Building.

(b) Multiplex has effectively submitted to judgment by default by the plaintiffs. Therefore, the Council is not in a position to answer any claim it is culpable for all losses in the same way the plaintiffs allege Multiplex is.

(c) Multiplex has not provided any evidence, information or submissions as to the veracity of the plaintiffs' claim against it. In contrast, the Council defended the claim on a number of grounds in addition to those relating to liability including the proposed scope and cost of repairs, the ability of the plaintiffs to recover GST, and the claims for general damages.

(d) In all of the circumstances it can reasonably be inferred that Multiplex may attract that residual liability because it has submitted to the claim by the plaintiffs.

Law

[179] In the Supreme Court decision, *Hotchin v New Zealand Guardian Trust Company Ltd,* the Chief Justice explained:[61]

> [140] The policy of the law is that it is unfair that someone liable in common with another to a plaintiff for the same damage should carry the entire burden. Where the plaintiff chooses to proceed against one defendant alone rather than another liable in respect of the same damage, contribution is equally available between the potential defendants. Any other result would, as Glazebrook J says at [71], be unjust. The injustice does not however arise unless the claims are in respect of the same damage. Contribution is therefore not available where damage is distinct or sequential, as in the case concerning expired limitation periods, or as I considered to be the case in relation to the liabilities of the vendor and Council in *Altimarloch.*

[180] The Supreme Court also recognised that "there are a number of High Court authorities for the proposition that a settlement of a claim by a plaintiff and defendant does not inhibit the continuation of the defendant's claim for contribution against a third party".[62]

[181] In 2009 in *Kilham Mews* the High Court was dealing with a multi unit leaky building claim against a number of defendants.[63] Duffy J referred to the decision of

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61 *Hotchin v New Zealand Guardian Trust Company Ltd* [2016] NZSC 24, [2016] 1 NZLR 906.

62 At [58] per Glazebrook J. Her Honour cited *Baylis v Waugh* [1962] NZLR 44 (SC); *Foodstuffs Properties (Wellington) Ltd v Institute of Geological & Nuclear Sciences Ltd* HC Wellington CP512/93, 27 May 1999 and *Crichton v Harteveld* HC Christchurch CP178/99, 15 June 2001 .

63 *Kilham Mews* above n 16.

Randerson J in *DB Breweries*[64] concluding that the plaintiffs may bring proceedings against a concurrent tortfeasor for the full amount of their claim but may not recover any more than the full amount of their loss.[65] For that reason, she concluded the opposing defendant's liability for damages was still alive regardless of the settlement the plaintiffs had entered into with the council.[66] She found the plaintiffs were entitled to judgment against the opposing defendant for the full amount of the damages claimed, $1,655,355 but that the plaintiffs, having already settled with the council for the sum of $980,000, could not recover from the opposing defendant an amount which would cause them to recover more than the total amount of $1,655,355.

[182] In that case, both the council and the opposing defendant had cross claimed against each other. On the council's cross claim Duffy J found that the council was entitled to damages of $784,000 equating to 80 per cent of the amount it paid the plaintiffs in settlement. The opposing defendant was also entitled damages against the council equating to 20 per cent of the plaintiffs' judgment against the opposing defendant.

[183] The principles adopted by Duffy J in *Kilham Mews* have been adopted in other decisions including in *Daily Freight*[67] in 1994 and in *Aitken Terrace* in 2011.[68]

[184] The *Kilham Mews* decision can be distinguished from the present case because the other defendant in that case actively defended the claim but was found liable to the plaintiffs following a full hearing and the council did not defend the cross claim against it.

Analysis

[185] By memorandum to the Court dated 10 April 2014, counsel for Multiplex confirmed that, despite having filed and served the statement of defence (which

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64 *DB Breweries Ltd v Mainzeal Property & Construction Ltd* HC Auckland CP 418/96, 26 June 2000.

65 *Kilham Mews*, above n16, at [5].

66 *Kilham Mews*, above n 16, at [14].

67 *Dally Freight (1994) Ltd v SD Mosese* [2014] NZHC 217.

68 *Body Corporate 208191 v Joyce Building Ltd* HC Auckland CIV-2006-404-5373, 16 December 2011.

simply denied the claim), it did not intend to take any significant further steps to defend the claim although reserved its right to do so.

[186] I accept the Liquidators were in a difficult position having an obligation to act prudently and not expend costs where there would be no specific advantage in doing so, and it seems being under some pressure to defend the claim without having funds to do so.

[187] Joint or concurrent tortfeasors are each liable for the full amount of the loss, known as liability *in solidum*.[69] A plaintiff can sue all or any of the concurrent tortfeasors and obtain judgment against each of them for the full amount of the loss. This case is a good example of the concurrent tortfeasor principle in practice. The fourth defendant is in liquidation and the proceedings against it have been stayed. The plaintiffs have settled their claims against the other defendants and seek judgment against KNZ and Multiplex only.

[188] The Council has successfully prosecuted its cross claim against Multiplex and I have awarded the Council 85 per cent of the amount it has paid to the plaintiffs after having analysed the respective contributions of the Council and Multiplex to the plaintiffs' loss. Multiplex has not cross claimed against the Council.

[189] The Council and the plaintiffs have chosen to settle the claim. This no doubt reflected an analysis of the litigation and other risks, the benefit of certainty and timely payment of the claim. The result of the Council's cross claim is that the Council will bear, at least, 15 per cent of the amount it agreed to pay the plaintiffs pursuant to the Settlement. I say "at least" because this analysis assumes that either KNZ and/or Multiplex will be in a position to meet their obligations as a result of this decision. The circumstances suggest this might well be unlikely. The effect of Multiplex's submission would be to reduce the benefit to the Council of having achieved the Settlement and to allow Multiplex to benefit from the Settlement without having taken any effective part in the proceedings. It would mean that the Council's minimum liability would increase above 15 per cent of the Settlement sum.

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[69] *Todd* above n 22 at [24.4.01]; and *Allison v KPMG Peat Marwick* [2000] 1 NZLR 560.

[190] In my assessment this would be unfair on the Council. The Council entered into the Settlement knowing Multiplex was playing no part in the proceeding, as it had indicated that intention and played no part in the first two weeks of the hearing, and knowing Multiplex had not filed a cross claim against it. Those factors would have formed part of the Council's assessment of its position in negotiating the Settlement. It would be quite unfair effectively to undermine the Council's position by increasing its minimum liability. It is true the Council's maximum liability would not be increased.

[191] Furthermore, I accept the Council's submission that the Council would not necessarily have been considered concurrently liable with Multiplex for *all* the same damage. This aspect could have been considered had Multiplex cross claimed against the Council.

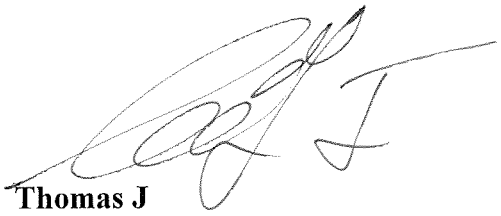
[192] I am not satisfied, in those circumstances, it would be just and equitable to reduce judgment on the Council's cross claim to take into account any amounts Multiplex will be liable to pay the plaintiffs pursuant to this judgment. It would undermine the purpose and advantages of settlement generally and in this case enable Multiplex, who has played no effective part in the proceeding, to benefit from the Council's initiative in achieving the Settlement. For these reasons there is no reduction in the amount of judgment on the Council's cross claim. It is just and equitable that Multiplex pay 85 per cent of the Council's liability.

Orders sought

[193] For the reasons given, judgment is given for the Council on its cross claim as against KNZ and Multiplex in the amount of 85 per cent of the sum paid pursuant to the Settlement together with interest at the Judicature Act rate since the date of the Settlement.

Costs

[194] Costs are awarded to the Council against both KNZ and BMX in respect of the cross claim and will be dealt with in a separate decision.



Thomas J

Solicitors:
Grimshaw and Co, Auckland for Plaintiffs
Buddle Findlay, Auckland for Second Defendant
Heaney and Partners, Auckland for Fifth Defendant

Schedule 1 – Amounts claimed by second plaintiffs

UNIT NO	REGISTERED PROPRIETORS	OI %	Share of repair cost for unit property based on OI% (total $39,782,796.63)	Share of interest on costs paid to date based on OI% (total $99,817.74)	Consequential losses (plus 5% increase for cost increases)	General damages	TOTAL CLAIM
GA	Ha Thi Hoang (assignor) Thuy Thu Vu (assignee)	0.55	$218,805.38	$549.00	$55,275.57	$0	$274,629.95
GB	Geoffrey Charles Cleveland	0.46	$183,000.86	$459.16	$32,706.51	$15,000	$231,166.54
GC	Racheal Sharon Metcalfe and Catherine Anne Morgan	0.41	$163,109.47	$409.25	$35,503.71	$25,000	$224,022.43
GE	Stephen Anthony Tiong (1/2 share) and Josephine Pak Lee Wong (1/2 share)	0.47	$186,979.14	$469.14	$35,212.17	$25,000	$247,660.46
GF	Hitch Chi Limited (assignor) Ojan Mohammadzadeh-Khoey (assignee)	0.57	$226,761.94	$568.96	$43,297.17	$0	$270,628.07
GG	Guiqin Yang	0.77	$306,327.53	$768.60	$52,169.67	$15,000	$374,265.80
GH	GC & TE Limited	0.36	$143,218.07	$359.34	$27,652.17	$0	$171,229.58
GJ	Glen Phillip Simpson and Jessica Maree Papps	0.36	$143,218.07	$359.34	$37,858.17	$25,000	$206,435.58
GK & GL	The Canterbury Smith Trustee Company Limited	0.65	$258,588.18	$648.82	$76,390.15	$0	$335,627.14
1A	Teck Cheong Ho	0.25	$99,456.99	$249.54	$32,360.01	$15,000	$147,066.55
1B & 9A	Jodie Nicole Burton	0.53	$210,848.82	$529.03	$57,790.03	$15,000	$284,167.89
1C	Derek Anthony Bennett and Jayne Bennett	0.53	$210,848.82	$529.03	$43,492.11	$25,000	$279,869.97
1D	Helena Sussana Nortje (1/2 share) and Helena Sussana Nortje (1/2 share) and Robin Leslie Ginders (1/2 share)	0.37	$147,196.35	$369.33	$34,968.21	$25,000	$207,533.88
1E	Naveen Kumar	0.87	$346,110.33	$868.41	$67,282.68	$15,000	$429,261.43
1F	Edwige Norma Renvoye	0.59	$234,718.50	$588.92	$48,284.67	$15,000	$298,592.09
1G	Pretoria Enterprises Limited	0.59	$234,718.50	$588.92	$41,254.92	$0	$276,562.34
1H	Li-Chuan Wang Lin	0.78	$310,305.81	$778.58	$53,592.42	$15,000	$379,676.81
1J	Dan Li and Po Liu as trustees of the Dan Li and Po Liu Family Trust	0.38	$151,174.63	$379.31	$43,528.17	$15,000	$210,082.10
1L	Paul Chagne and Yannick Chagne	0.44	$175,044.31	$439.20	$43,962.87	$25,000	$244,446.37

UNIT NO	REGISTERED PROPRIETORS	OI %	Share of repair cost for unit property based on OI% (total $39,782,796.63)	Share of interest on costs paid to date based on OI% (total $99,817.74)	Consequential losses (plus 5% increase for cost increases)	General damages	TOTAL CLAIM
1K	Meirong Zhang and Wenlin Wang	0.37	$147,196.35	$369.33	$38,735.61	$25,000	$211,301.28
1M	Yang Wang	0.30	$119,348.39	$299.45	$39,833.22	$15,000	$174,481.06
1N	Thomas Guest and Mary Rose Theresa Guest	0.32	$127,304.95	$319.42	$38,239.32	$25,000	$190,863.69
1P	Moshe Ami Zarchi and Sannipha Chotikapanich	0.32	$127,304.95	$319.42	$40,630.17	$25,000	$193,254.54
2A	Youna Choi and Kang Ho Lee	0.25	$99,456.99	$249.54	$28,132.71	$25,000	$152,839.25
2B	Edward Ben Robinson	0.26	$103,435.27	$259.53	$30,038.46	$15,000	$148,733.26
2C	Dorothy Wu	0.53	$210,848.82	$529.03	$44,783.19	$15,000	$271,161.05
2D	Varky Investments Limited	0.37	$147,196.35	$369.33	$32,983.71	$0	$180,549.38
2E & 6B	Nalayini Brito and David Gareth Davies	1.15	$457,502.16	$1,147.90	$102,823.14	$25,000	$586,473.21
2F	Kai Liu	0.59	$234,718.50	$588.92	$50,909.67	$15,000	$301,217.09
2G	ASAP Investments Limited	0.49	$194,935.70	$489.11	$41,323.17	$0	$236,747.98
2H	Pi Lien Hsu	0.78	$310,305.81	$778.58	$48,830.67	$25,000	$384,915.06
2J	Mei Fong Tang	0.38	$151,174.63	$379.31	$41,323.17	$25,000	$217,877.10
2K	Lan Xue	0.37	$147,196.35	$369.33	$43,928.85	$15,000	$206,494.52
2L	John Williams	0.34	$135,261.51	$339.38	$37,280.31	$15,000	$187,881.20
2M	Jingyang Chen	0.30	$119,348.39	$299.45	$37,719.57	$15,000	$172,367.41
2N	Cheng Fook Lee	0.33	$131,283.23	$329.40	$43,055.67	$15,000	$189,668.30
2P	Perry Child and Rosemary Child as trustees of the Extreme Investments Trust	0.43	$171,066.03	$429.22	$47,329.17	$25,000	$243,824.41
3A	Yeon Ho Kim and Hee Young Kim	0.25	$99,456.99	$249.54	$29,287.71	$25,000	$153,994.25
3B	Theirry Jean-Michel Bance	0.26	$103,435.27	$259.53	$33,041.46	$15,000	$151,736.26
3C	Paul Justin Harvey	0.53	$210,848.82	$529.03	$42,255.21	$25,000	$278,633.07
3D	Frederic Louis Joseph Faure and Nathalie Marie-Denise Cambou	0.38	$151,174.63	$379.31	$32,563.71	$25,000	$209,117.64
3E	M Y Gold Investments Ltd (assignor) 187 Holdings Limited (assignee)	0.89	$354,066.89	$888.38	$47,673.93	$0	$402,629.20

UNIT NO	REGISTERED PROPRIETORS	OI %	Share of repair cost for unit property based on OI% (total $39,782,796.63)	Share of interest on costs paid to date based on OI% (total $99,817.74)	Consequential losses (plus 5% increase for cost increases)	General damages	TOTAL CLAIM
3F	Xiao Liu (assignor) The World Gospel Bible College Charitable Trust (assignee)	0.60	$238,696.78	$598.91	$46,630.92	$0	$285,926.61
3G	Avarow Limited	0.60	$238,696.78	$598.91	$48,100.92	$0	$287,396.61
3H	Yeoreum Kim	0.79	$314,284.09	$788.56	$48,699.42	$25,000	$388,772.07
3J	Chuan-Chuan Chiu and Chun-Te Lin as trustees of the Body Corporate Administration Trust	0.39	$155,152.91	$389.29	$41,170.92	$35,000	$231,713.12
3K	Qixin Bao (assignor) Jiabing Wang (assignee)	0.38	$151,174.63	$379.31	$41,921.67	$0	$193,475.60
3L	Anne Hooper	0.35	$139,239.79	$349.36	$35,293.71	$25,000	$199,882.86
3M	Siu Ling Fok (assignor) Joyce Peck Ching Neo (assignee)	0.30	$119,348.39	$299.45	$41,034.42	$0	$160,682.26
3N	Jian Fen Ye and Biao Xia	0.33	$131,283.23	$329.40	$38,782.17	$25,000	$195,394.80
3P	Qiuhong Li	0.33	$131,283.23	$329.40	$37,280.67	$15,000	$183,893.30
4A & 13J &14E &14G	Daryl Kerry Huntington, Timothy John Burcher and Maurice Leicester Chatfield as trustees of the Huntington Trust (1/2 share) and Jacqueline Anne Turner, Timothy John Burcher and Maurice Leicester Chatfield as trustees of the Jaytee Trust (1/2 share).	2.67	$1,062,200.67	$2,665.13	$145,103.45	$25,000	$1,234,969.25
4B & 8B	Justine Sarah Girgin	0.54	$214,827.10	$539.02	$56,265.43	$15,000	$286,631.55
4C	Nick Stoikos and Sophie Stoikos	0.54	$214,827.10	$539.02	$45,497.61	$25,000	$285,863.73
4D	Tze Yein Ly (assignor) Xuchuan Chen (assignee)	0.38	$151,174.63	$379.31	$35,031.21	$0	$186,585.14
4E	King Sing Fong and Chu Len Fong	0.89	$354,066.89	$888.38	$72,747.93	$35,000	$462,703.20
4F	He Wang	0.61	$242,675.06	$608.89	$46,111.17	$25,000	$314,395.12
4G	Hui Wang	0.61	$242,675.06	$608.89	$49,665.42	$15,000	$307,949.37

UNIT NO	REGISTERED PROPRIETORS	OI %	Share of repair cost for unit property based on OI% (total $39,782,796.63)	Share of interest on costs paid to date based on OI% (total $99,817.74)	Consequential losses (plus 5% increase for cost increases)	General damages	TOTAL CLAIM
4H	Sung Ja Christine Choi and Hye Eun Jeon as trustees of the Create Trust	0.79	$314,284.09	$788.56	$50,846.67	$25,000	$390,919.32
4J	Hui Liu (assignor) Fenglian Wang (assignee)	0.39	$155,152.91	$389.29	$42,415.17	$0	$197,957.37
4K	Ee Ho Law (1/2 share) and Kiong Hung Yii (1/2 share)	0.38	$151,174.63	$379.31	$37,328.97	$25,000	$213,882.90
4L	Michael Mu San and Anita Mu San	0.35	$139,239.79	$349.36	$31,459.11	$25,000	$196,048.26
4M	Xiaotian Hu	0.31	$123,326.67	$309.43	$48,045.27	$25,000	$196,681.37
4N	Jian Cong Xiao	0.34	$135,261.51	$339.38	$36,402.87	$15,000	$187,003.76
4P	Deqiang Lao and Song Quing Ou	0.34	$135,261.51	$339.38	$47,269.89	$25,000	$207,870.78
5A	Myung Hoe Kim	0.26	$103,435.27	$259.53	$24,991.11	$15,000	$143,685.91
5B	Jian Huang	0.27	$107,413.55	$269.51	$29,922.96	$15,000	$152,606.02
5C	Laszlo Csikos	0.44	$175,044.31	$439.20	$31,549.83	$15,000	$222,033.33
5D	Siao Thong Ynam	0.38	$151,174.63	$379.31	$29,602.71	$25,000	$206,156.64
5E & 5N	Yong-Il Ko and Tae-Wha Choi	1.24	$493,306.68	$1,237.74	$98,380.95	$35,000	$627,925.37
5F	Anlin Investments Limited	0.61	$242,675.06	$608.89	$36,934.17	$0	$280,218.12
5G	DJ & Pet Holdings Limited	0.61	$242,675.06	$608.89	$47,581.17	$0	$290,865.12
5J	Lifei Chen	0.39	$155,152.91	$389.29	$37,574.67	$15,000	$208,116.87
5H & 6A	Hiung Kim	1.07	$425,675.92	$1,068.05	$74,464.38	$25,000	$526,208.35
5K	Hieu Xuan Hoang	0.38	$151,174.63	$379.31	$41,955.69	$15,000	$208,509.62
5L	Ja Hyung Kwon	0.35	$139,239.79	$349.36	$32,036.61	$15,000	$186,625.76
5M	Lou Liu (assignor) Zhenxiang Ma (assignee)	0.31	$123,326.67	$309.43	$38,869.11	$0	$162,505.21
5P	Eka Tjahjadi and Laniwati Wiguna	0.34	$135,261.51	$339.38	$36,934.17	$25,000	$197,535.06
6C	Patricia Ina Margaret Lawrence and Ann Davidson	0.45	$179,022.58	$449.18	$33,840.51	$25,000	$238,312.27
6D	Scott Sinclair Logie	0.39	$155,152.91	$389.29	$31,723.71	$15,000	$202,265.91
6E	Glenrose Trustees Limited as trustees of the Glenrose Trust	0.90	$358,045.17	$898.36	$55,422.93	$0	$414,366.46

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6F	Sung Hoon Lee and Soo Jung Kim	0.62	$246,653.34	$618.87	$41,197.17	$25,000	$313,469.38
6G	Armand Yune and Simone Vongy Yune	0.62	$246,653.34	$618.87	$48,704.67	$35,000	$330,976.88
6H	Tao Jiang	0.80	$318,262.37	$798.54	$48,358.17	$15,000	$382,419.08
6J	Yali Zhou	0.40	$159,131.19	$399.27	$43,792.77	$25,000	$228,323.23
6K	Dean Owen Badcock	0.39	$155,152.91	$389.29	$30,802.17	$15,000	$201,344.37
6L	Hyung Been Kang	0.36	$143,218.07	$359.34	$34,369.71	$25,000	$202,947.12
6M	Kantilal Girdhar Kevat And Niruben Kantilal Kevat	0.32	$127,304.95	$319.42	$37,165.17	$25,000	$189,789.54
6N	Hyun Sook Ko and Seol Hyun Hwang (assignors) Ho Fai Edmund Lai (assignee)	0.34	$135,261.51	$339.38	$40,630.17	$0	$176,231.06
6P	Doo Hwan Zang	0.34	$135,261.51	$339.38	$34,739.67	$15,000	$185,340.56
7A	Soun Ha Youn	0.27	$107,413.55	$269.51	$25,360.71	$15,000	$148,043.77
7B	Yosy Paula Karjoko	0.28	$111,391.83	$279.49	$25,360.71	$25,000	$162,032.03
7C	Wilfred Manavarere and Giana Lao ep Manavarere	0.45	$179,022.58	$449.18	$34,861.11	$25,000	$239,332.87
7D	Michael Henry Johnston (1/2 share) and James Martin Ensor (1/2 share)	0.39	$155,152.91	$389.29	$28,405.71	$25,000	$208,947.91
7E	Alison Elizabeth Turner, Andrew John Turner, and Nigel Andrew Milton as trustees of the Turner Family Trust	0.91	$362,023.45	$908.34	$44,775.93	$25,000	$432,707.72
7F	Chorng-Ming Shyu and Hui-Mei Chen	0.62	$246,653.34	$618.87	$39,202.17	$35,000	$321,474.38
7G	Shengchao Qiu	0.62	$246,653.34	$618.87	$47,287.17	$15,000	$309,559.38
7H	Milly Ly Bisch	0.81	$322,240.65	$808.52	$47,308.17	$25,000	$395,357.35
7J	Jia Yi He	0.40	$159,131.19	$399.27	$39,202.17	$25,000	$223,732.63
7K	Timothy Wayth Gudgeon and Susan Margaret Gudgeon	0.39	$155,152.91	$389.29	$33,087.81	$25,000	$213,630.01
7L	Yoi Mun Wong and Poh Ghim Kung	0.36	$143,218.07	$359.34	$33,399.51	$25,000	$201,976.92
7M	Lynne Feng-Ling Chen (assignor) Landlords Limited (assignee)	0.32	$127,304.95	$319.42	$36,218.07	$0	$163,842.44

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7N	Jiang Jin and Xiao Li Jiang	0.35	$139,239.79	$349.36	$36,887.97	$25,000	$201,477.12
7P	Chang Soo You and Eun Hee Han	0.35	$139,239.79	$349.36	$34,878.27	$25,000	$199,467.42
8A	May Jean Louie Stokes	0.27	$107,413.55	$269.51	$28,305.96	$15,000	$150,989.02
8C	David William Myles	0.45	$179,022.58	$449.18	$31,118.91	$25,000	$235,590.67
8D	Ho Sill Shon	0.40	$159,131.19	$399.27	$29,203.71	$25,000	$213,734.17
8E	Ching Bor Cheung and Mei Ling Chan as trustees of the Cheung Family Trust	0.92	$366,001.73	$918.32	$67,707.93	$35,000	$469,627.98
8F	Sophie Emilienne Fuensanta Cabrera	0.63	$250,631.62	$628.85	$33,889.17	$15,000	$300,149.64
8G	Francis Harley Cleary, Anthony John Hall, Sarah Frances Hall and Nikki Marie Hall as trustees of the NMH and SFH Family Trust	0.63	$250,631.62	$628.85	$43,192.17	$25,000	$319,452.64
8H	Christian Robert Colonna and Simone Marie-Madeline Colonna	0.82	$326,218.93	$818.51	$48,599.67	$35,000	$410,637.11
8J	Excell Property Investments Limited Auckland Apartments Limited (assignee)	0.41	$163,109.47	$409.25	$35,684.67	$0	$199,203.39
8K	Bernard Hew (3/10 share) and Zhaoyu Zhong (7/10 share)	0.40	$159,131.19	$399.27	$37,839.27	$35,000	$232,369.73
8L	Luobing Sun and Luying Luo	0.37	$147,196.35	$369.33	$31,597.71	$25,000	$204,163.38
8N	Robandi Limited (assignor) Cheng Wu (assignee)	0.35	$139,239.79	$349.36	$38,377.92	$0	$177,967.07
8P	Anro Property Investments Limited	0.35	$139,239.79	$349.36	$36,402.87	$0	$175,992.02
9B	Robert Louis Marie Grandie and Jacquiline Danielle Grandie	0.28	$111,391.83	$279.49	$27,815.09	$25,000	$164,486.41
9C	Daniel Chien-Lun Huang	0.56	$222,783.66	$558.98	$41,415.21	$25,000	$289,757.85
9D &14A	Mike Haddad and Fadya Haddad	0.70	$278,479.58	$698.72	$55,514.67	$25,000	$359,692.97
9E	Jong Tae Lee and Hwang Rang Lee	0.92	$366,001.73	$918.32	$66,027.93	$35,000	$467,947.98
9F	Xinshan Li	0.54	$214,827.10	$539.02	$34,739.67	$15,000	$265,105.79
9G	Louis Leo, Linda-Anna Mu ep Leo, Sabrina Leo and Beatrice Leo	0.64	$254,609.90	$638.83	$46,289.67	$35,000	$336,538.40

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9H	Kyung Ah Huh Yoo and Ben Huh	0.82	$326,218.93	$818.51	$48,331.92	$25,000	$400,369.36
9J & 12G	Fang Li	1.06	$421,697.64	$1,058.07	$78,509.34	$15,000	$516,265.05
9K	Tianlan Wu	0.40	$159,131.19	$399.27	$39,625.32	$15,000	$214,155.78
9L & 12M	Marie-Claude Gueirard	0.71	$282,457.86	$708.71	$62,237.13	$25,000	$370,403.69
9M	Li-Chen Meng Liu and Kuo-Kang Liu	0.33	$131,283.23	$329.40	$41,785.17	$35,000	$208,397.80
11M	Li-Chen Meng Liu and Juo-Hsuan Liu	0.34	$135,261.51	$339.38	$36,379.77	$25,000	$196,980.66
9N	June Goddard Properties Limited, Hing Sing So and Yan Shi (assignors) Kevin Yan Shiel as trustee of the MMII Family Trust (assignee)	0.36	$143,218.07	$359.34	$38,608.92	$0	$182,186.33
9P	Jung Bun Park and Woo Sung Han	0.36	$143,218.07	$359.34	$30,985.92	$25,000	$199,563.33
10A	Mee Jung Kim	0.28	$111,391.83	$279.49	$23,628.21	$15,000	$150,299.53
10B	Ying Cao	0.29	$115,370.11	$289.47	$23,628.21	$15,000	$154,287.79
10C	Padraig Martin Delaney (1/2 share) and Chit Woei William Long (1/2 share)	0.56	$222,783.66	$558.98	$32,905.38	$25,000	$281,248.02
10D	Fady Haddad and Jeanvieve Haddad	0.50	$198,913.98	$499.09	$27,523.71	$25,000	$251,936.78
10E	Noeline Lis Tchan Lo (1/2 share) and Wai Leon Tchan Lo (1/2 share)	0.93	$369,980.01	$928.30	$64,347.93	$35,000	$470,256.24
10F	Ok Suk Jang (assignor) Hae Min Yeon (assignee)	0.64	$254,609.90	$638.83	$34,351.17	$0	$289,599.90
10G	Serge Michel Lihault and Yvette Lioux ep Lihault	0.64	$254,609.90	$638.83	$41,281.17	$35,000	$331,529.90
10H	Huixin Jiang	0.83	$330,197.21	$828.49	$45,743.67	$15,000	$391,769.37
10J	Qiulan Xu	0.51	$202,892.26	$509.07	$41,302.17	$15,000	$259,703.50
10K	Amy Lan Lan	0.40	$159,131.19	$399.27	$35,197.05	$15,000	$209,727.51
10L	Chang Soon Choi	0.37	$147,196.35	$369.33	$29,749.71	$25,000	$202,315.38
10N	Jianxing He	0.36	$143,218.07	$359.34	$33,238.17	$15,000	$191,815.58

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10P	Liu Hong	0.36	$143,218.07	$359.34	$33,238.17	$15,000	$191,815.58
11A	Gillian Mary Jeavons	0.29	$115,370.11	$289.47	$25,083.51	$25,000	$165,743.09
11B	Xinsong Huang (assignor) Xiunan Liu (assignee)	0.29	$115,370.11	$289.47	$25,083.51	$0	$140,743.09
11C	Liyue Zhou	0.60	$238,696.78	$598.91	$39,306.81	$15,000	$293,602.50
11D	James Nicholas Sullivan	0.46	$183,000.86	$459.16	$27,103.71	$25,000	$235,563.74
11E	Qian Li and Xusheng Li (assignors) GMD Investments Limited (assignee)	0.93	$369,980.01	$928.30	$66,237.93	$0	$437,146.24
11F	Alice Tai Ho Kong, James Eu-Jin Ong and Perpetual Trust Limited as trustees of the A & J Trust	0.65	$258,588.18	$648.82	$41,583.57	$35,000	$335,820.56
11G	Yanhong Xu	0.65	$258,588.18	$648.82	$41,375.67	$25,000	$325,612.66
11H	Stephane Mathieu	0.83	$330,197.21	$828.49	$48,767.67	$15,000	$394,793.37
11J	Shendi Xiao	0.42	$167,087.75	$419.23	$33,868.17	$15,000	$216,375.15
11K	Samyna Kit Kau Tam	0.41	$163,109.47	$409.25	$35,877.45	$25,000	$224,396.17
11L	Sang Yi Park	0.38	$151,174.63	$379.31	$29,287.71	$15,000	$195,841.64
11N	CJP Property Holdings Limited	0.36	$143,218.07	$359.34	$31,574.97	$0	$175,152.38
11P	Lane Reed Investments Limited	0.36	$143,218.07	$359.34	$30,073.47	$0	$173,650.88
12A	Wendy Ting Huong Nee	0.29	$115,370.11	$289.47	$25,476.21	$15,000	$156,135.79
12B	Josie Chen	0.30	$119,348.39	$299.45	$24,321.21	$15,000	$158,969.05
12C	Hong Leong Gan	0.62	$246,653.34	$618.87	$31,765.71	$15,000	$294,037.92
12D	Henri Mitchel Marie-Joseph Blondin and Patricia Chansin ep Blondin	0.56	$222,783.66	$558.98	$31,146.21	$35,000	$289,488.85
12E	Young Hee Kim	0.95	$377,936.57	$948.27	$55,790.43	$15,000	$449,675.27
12F	Thierry Pellegrino and Erika Sigrid Pellegrino	0.65	$258,588.18	$648.82	$43,454.67	$25,000	$327,691.66
12H	Hubert Ly Tang and Lysiane Ly Tang	0.84	$334,175.49	$838.47	$39,905.67	$25,000	$399,919.63
12J	Kenneth Allen Jones	0.42	$167,087.75	$419.23	$30,277.17	$15,000	$212,784.15

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12K	Nelly Koan (1/4 share), Jerry Koan (1/4 share), Andy Koan (1/4 share) and Shirley Koan (1/4 share)	0.41	$163,109.47	$409.25	$39,370.17	$35,000	$237,888.89
12L	Afou Tang, Pauline Chaujon and Vaiana Tang	0.38	$151,174.63	$379.31	$25,476.21	$35,000	$212,030.14
12N	Sia Holdings Limited (assignor) Ali Akbar Feyzabadi and Kaye Marie Feyzabadi (assignees)	0.37	$147,196.35	$369.33	$33,007.17	$0	$180,572.84
12P	Estate of Chi Ma	0.37	$147,196.35	$369.33	$30,697.17	$0	$178,262.84
13A & 13B	Sang Jin Kim and Hyang Sook Kim	0.59	$234,718.50	$588.92	$47,117.83	$25,000	$307,425.25
13C	Ishou Limited	0.64	$254,609.90	$638.83	$35,360.49	$0	$290,609.22
13D	Maria Jowett	0.47	$186,979.14	$469.14	$22,903.71	$0	$210,352.00
13E	Xuemei Liu	0.99	$393,849.69	$988.20	$59,391.93	$0	$454,229.81
13F	James Edward Richard and Claire Louise Fox (assignors) Philippe Alain Meneut and Arianne Paulette Meneut (assignees)	0.76	$302,349.25	$758.61	$38,992.17	$0	$342,100.04
13G	Valeriy Safarov, Laura Safarova, Yana Valerevna Safarova and Valeria Safarova	0.66	$262,566.46	$658.80	$41,459.67	$35,000	$339,684.92
13K	Mark Robert Kerly	0.41	$163,109.47	$409.25	$35,968.17	$25,000	$224,486.89
13L	Ho-Woong Lee	0.39	$155,152.91	$389.29	$23,558.91	$15,000	$194,101.11
13M	Wudo Zuo, Yonghong Pan and Ning Zuo as trustees of the Dayongning Trust	0.34	$135,261.51	$339.38	$33,145.77	$25,000	$193,746.66
13N	Zhijian Xiao (assignor) Saudara Property Investment Limited (assignee)	0.37	$147,196.35	$369.33	$30,928.17	$0	$178,493.84
13P	Dariusz Koper and Malgorzata Ewa Koper	0.37	$147,196.35	$369.33	$32,036.97	$25,000	$204,602.64
14B	Joseph Haddad and Ramona Haddad	1.11	$441,589.04	$1,107.98	$63,833.43	$25,000	$531,530.45
14C	Yaozhang Qu	1.57	$624,589.91	$1,567.14	$69,282.93	$25,000	$720,439.98
14D	Shenghui Xie and Yanfang Ou	1.47	$584,807.11	$1,467.32	$54,267.93	$25,000	$665,542.36

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14F, 14H & 14J	Anthony John Fair and Daniel William Anthony Fair	1.16	$461,480.44	$1,157.89	$84,802.18	$25,000	$572,440.51
14K	Andy Kurniawan Saputra	0.37	$147,196.35	$369.33	$26,977.71	$15,000	$189,543.38
				TOTAL	**$7,668,448**	**$3,320,000**	**$49,905,903**