BRW.

| Entrepreneurs | Business | Technology | Leadership | Marketing | BRW Lists |

Register for BRW lists   Events   Search BRW

Ben Hurley *Reporter*

Ben covers the property industry and has a keen interest...   ↓ Show all

View more articles from Ben Hurley

Ruling makes it harder to sue your apartment builder

Published 12 December 2012 16:19, Updated 13 December 2012 05:37

in Share   f Recommend ♥ 3   g+1   A⁺ A⁻ 🖶 ✉

If you have invested in a serviced apartment in NSW, recent court decisions could leave you with no rights to sue the builder for building faults.

Chris Kerin, a partner at Teys Lawyers, says a series of wins by developer Brookfield Multiplex in the NSW Supreme Court mean apartment owners are no longer able to sue for building negligence in the event of water ingress, cracks or other structural problems.

"All of a sudden there are a whole lot of buildings that don't have any recourse at all for building negligence," Kerin says.

The most recent case involved the owners corporation of a block of Mantra serviced apartments in Chatswood who had sued the builder, Brookfield Multiplex, alleging negligent building causing issues such as water ingress. Residential apartment owners have a six-year statutory warranty period during which the developer is required to fix structural defects, but this does not apply to serviced apartments, which are a bit like hotel rooms. So serviced apartment owners have to instead sue the builder for negligence.

But Justice Robert McDougall in October ruled Brookfield Multiplex did not owe the owners a duty of care when constructing the building, effectively ruling out the negligence avenue.

The decision follows another in June where owners of a residential apartment complex in Terrigal, on the NSW Central Coast, were found to not have the ability to sue the builder for negligence because they had the protection of statutory warranties under the Home Building Act.

Mr Kerin, who acts on behalf of owners corporations in defects claims, says there are probably 38,000 people in NSW alone who live in an apartment building newer than three years and are affected by defects. The NSW Supreme Court is dealing with dozens of cases over defects, with many more in local courts and tribunals.

Most Popular

1. 'This really hurt': Grill'd founder Simon Crowe lands back in Australia to deal with workplace crisis

2. Social media prophet Brian Solis on what post-digital people want

3. Another Shark attack as Robert Herjavec launches cybersecurity business in Australia, reveals his best Shark Tank deal

4. 'Grill'd CEO needs to front up to the media'

5. 'We work, but does WeWork?' Servcorp's Moufarrige on his co-working caution, and that £32.5K London fine
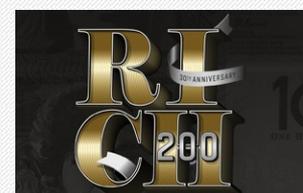
Rich 200

RICH 200

BRW Rich 200 List 2015

He said these recent decisions would have a major impact on the future rights of non-residential apartments in NSW, and could impact cases in other states. While residential apartments have the benefit of statutory warranty periods, non-residential apartments rely on negligence claims. "They're serviced apartments, hotels, anything that doesn't have owners living in them, they don't have statutory warranties and they can't sue for negligence, so they have no recourse."

"That's bad. The builders can do what they like."

Brookfield Multiplex has been on the front foot in challenging defect claims in recent years, after announcing it was no longer building apartments in NSW due to an expensive litigation tail that was wiping out its profits.

George Kostas, managing director construction and development for Brookfield Multiplex Australasia, says Brookfield Multiplex had built 60 residential buildings in NSW worth $2.5 billion, and all of them had been subject to defect claims.

"I don't accept that was the case," Mr Kostas told *The Australian*.

He called for clearer definitions of defects to give developers more certainty, arguing litigation was forcing builders out of doing business in New South Wales.

Kerin says Brookfield Multiplex was taking a more adversorial approach to the detriment of apartment owners.

"Brookfield Multiplex's approach is to focus on technical points of law rather than rectifying the defects or improving building quality practice," Kerin says.

Recommended for you

Keep your bank manager on-side with these 4 dos and don'ts

How Big 4 accounting firms embrace internal disrupters

Dear Australia Post, here's 4 reasons you lost my $100k-a-year…

Digital disruption spells end for The Good Guys' 'pay cash'…

Shark Tank business HEGs finds manufacturing in Adelaide is…

From Around the Web

The Dollar Trade Gets Complicated
The Financialist by Credit Suisse

7 Stocks To Fund A Happy Retirement
TalkMarkets

Micron Technology Is Said to Be Takeover Target of Chinese…
New York Times

These Beautiful Women From Around The Globe will Shatter your…
Entertain Me

Top 10 Most Popular Home Decorations the Rich Do
DIY insider

Recommended by Outbrain

Comments

0 Comments

Sort by Newest ▼

[Add a comment...]

SECTIONS

Entrepreneurs

Business

Technology

Leadership

Marketing

BRW Lists

ARCHIVE

Professions

Investing

BRW. Lounge

BRW LISTS

The BRW Rich List

Young Rich List

Best Places to Work

Fast 100

Register for list updates

JOIN THE CONVERSATION

BRW on Facebook

BRW on Twitter

BRW Newsletters

EVENTS

Events

Register for event updates

HELP & INFORMATION

About BRW

Contact BRW

Advertise on BRW

Privacy Policy

Copyright

Conditions of Use

FINANCIAL REVIEW GROUP

↗ The Australian Financial Review

↗ AFR Magazine

↗ AFR Boss

↗ AFR Capital

↗ Smart Investor

BRW.