

IN THE DISTRICT COURT
AT CHRISTCHURCH

I TE KŌTI-Ā-ROHE
KI ŌTAUTAHU

CIV-2023-009-2735

BETWEEN

Body Corporate 463208 a body corporate
created under the Unit Titles Act 2010

First Plaintiff

AND

David Gilbert and Janet Gilbert, M&T Projects
Limited, Grant & FI Limited, Mark Frame and
Donna Frame as Trustees of the Frame Family
Trust, D Reynolds Electrical Limited, KL Gin,
SM Gin and PD Sewell as Trustees of the Kasagi
Trust, Uni-go NZ Limited, Idle Sands Limited, as
registered proprietors of the units comprised in
the development of Body Corporate 463208

Second Plaintiffs

AND

Body Corporate 467074 a body corporate
created under the Unit Titles Act 2010

Third Plaintiff

STATEMENT OF CLAIM
Dated 25 September 2023

Plaintiffs' Lawyer
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AND

**DJ Rentals Limited, David Leadbetter and
Walentina Leadbetter as Trustees of the
Leeann Leadbetter Trust, Circle Holdings
Limited, Gary Reid and Gerald Dwyer as
Trustees of the Reid Family Trust, Claude
Charles John Kavanagh, Nga Mahi Investments
Limited Tayne Holdings Limited, Tania Davis,
Darrin Dudson, as registered proprietors of the
units comprised in the development of Body
Corporate 467074**

Fourth Plaintiffs

AND

**CBC Construction 2010 Limited a company
with its registered office at KPMG, 247
Cameron Road, Tauranga 3110
[company number 2474423]**

Defendant

The First Plaintiff, Second Plaintiffs, Third Plaintiff and Fourth Plaintiffs say :

1. The First Plaintiff, Body Corporate 463208, is a body corporate created under the Unit Titles Act 2010, comprising Units 1-8 and the common property at 19 Nga Mahi Road, Sockburn, Christchurch, recorded in Unit plan 463208 [Canterbury Land Registry].
2. The Second Plaintiffs are the owners of Units 1-8 at 19 Nga Mahi Road, which form the unit title development of Body Corporate 463208.
3. The Third Plaintiff, Body Corporate 467074, is a body corporate created under the Unit Titles Act 2010, comprising of Units 9-19 and the common property at 19 Nga Mahi Road, Sockburn, Christchurch, recorded in Unit plan 467074 [Canterbury Land Registry].
4. The Fourth Plaintiffs are the owners of Units 9-19 at 19 Nga Mahi Road, which form the unit title development Body Corporate 472074.
5. The Defendant is an incorporated company having its registered office at KPMG, 247 Cameron Road, Tauranga 3110 and which carries on business as a non-residential construction company.
6. The Defendant carried out the subdivision and development of 19 Nga Mahi Road and constructed the buildings, common property and improvements in two stages, on behalf of Tetley No. 2 Limited.

Background

7. From November 2012, the Defendant subdivided and developed Lot 2, DP393015 to form and register the unit title developments and constructed buildings, principal units and accessory units of the two developments.
8. The buildings, principal units and accessory units were constructed in accordance with drawings, plans and specifications subject to a building consent issued by the Christchurch City Council (BCN / 2012/4983).
9. Construction of buildings incorporating principal units 1-8 and associated accessory units in BC 463208 was completed in or about June 2013 and a code compliance certificate issued by the Christchurch City Council on 21 June 2013.
10. Construction of buildings incorporating principal units 9-19 and associated accessory units in BC 467074 was completed in 2014.

Building defects

11. The buildings and principal units have building defects including :

Exterior cladding defects

- a. Incorrectly installed, non-compliant and nondurable sealant-filled junctions between pre-cast concrete panels and Titan fibre cement façade boards, which have failed.
- b. Incorrectly installed, non-compliant and nondurable sealant junctions at express joints between Titan fibre cement façade panels, which have failed.

External joinery defects

- c. External exit doors are defective, non-weathertight and non-compliant for principal Units 2-7, 10, 11, 13-18, being :
 - i. hinged to open inwards, and not in the direction of escape for the primary exit way in the event of fire;
 - ii. installed with flat-base sills and/or without any physical barrier to prevent or mitigate against moisture entry between the base of the external door and the sill;
 - iii. insufficient clearance of exterior hard surfaces to external door ways.

(together the building defects).

- 12. By reason of the exterior cladding defects, the applied sealant has not fully and durably adhered to the identified exterior cladding elements and has cracked, deteriorated and in parts disintegrated allowing moisture ingress into the buildings' envelopes on all elevations.
- 13. By reason of the external joinery defects, the unit owners, occupiers and visitors to the identified 14 principal units do not have an acceptable safe path of exit in a fire event and the 14 principal units have suffered moisture ingress with resultant damage to floor coverings, interior linings and fittings.
- 14. The Plaintiffs engaged building consultants in June 2022 to investigate and assess the exterior cladding defects and the external joinery defects, from which scopes of building works were prepared and costed to remediate the

building defects, together with associated enabling and reinstatement works (remedial works).

15. The estimated cost for the remedial works as at 20 June 2023 is :

Remediation of the exterior cladding defects	\$117,840 plus GST
Replacement of external joinery to 14 units:	\$221,399 plus GST

together with consent fees, contract works insurance premiums and contingencies/escalation.
16. The Plaintiffs collectively are not in a position to themselves carry out the remedial works but are satisfied, on the advice received, that remediation is practically possible and viable.
17. The Plaintiffs notified the Defendant of the building defects by letter dated 21 December 2022.
18. The Defendant has refused or unreasonably failed to address the building defects or to satisfactorily compensate the Plaintiffs for such building defects in whole or in part.
19. Pursuant to a standstill arrangement entered between the Plaintiffs and the Defendant on 6 April 2023, the Defendant waived or suspended its rights or entitlement to plead as a defence that the Plaintiffs' claims, or some of them, were time barred under section 11 of the Limitation Act 2010 for an extended period up to and including 30 September 2023.

AS A FIRST CAUSE OF ACTION AGAINST THE DEFENDANT, the Plaintiffs repeat paragraphs 1 to 19 above and say :

20. The Defendant owed the First Plaintiffs and Third Plaintiffs and owed each of the Second Plaintiffs and Fourth Plaintiffs as purchasers, a tortious duty to exercise reasonable skill and care when carrying out building work to construct the buildings and the principal units including to apply good building practices at all times and to select products and materials reasonably fit for purpose, in order to achieve compliance with the building code and the Building Act 2004.
21. In breach of its duty of care, the Defendant constructed the buildings and selected products and materials with the exterior cladding defects and the external joinery defects.

22. By reason of such breaches, the Plaintiffs collectively have suffered, and will suffer further, financial loss being incurrence of the cost of building works to remediate the building defects and to repair resultant physical damage.

WHEREFORE the First Plaintiff, Second Plaintiffs, Third Plaintiff and Fourth Plaintiffs jointly and severally claim against the Defendant :

- a. Judgment for the First Plaintiff and the Third Plaintiff for the actual costs of remediating the exterior cladding defects to be incurred or such reasonable amount for such works as this Court shall assess.
- b. Judgment for all Plaintiffs for the actual costs of remediating the external joinery defects and repairing resultant damage to be incurred or such reasonable amount for such works as this Court shall assess.
- c. Interest on each judgment amount pursuant to section 10 of the Money Claims Act 2006 calculated from 21 December 2022, being the date the Plaintiffs notified the Defendant of the building defects, to the date of payment of the judgment amounts in full.
- d. Costs on the proceeding.

This **STATEMENT OF CLAIM** is filed by **Peter Clifford Maciaszek**, Lawyer for the Plaintiffs of the firm Maciaszek Brown Law.

The address for service of the Plaintiffs is Maciaszek Brown Law, Level 4 of Building 6, 6 Hazeldean Road, Addington, Christchurch

Documents for service may be left at the above address or may be:

- a. Posted to PO Box 42059, Christchurch or
- b. Transmitted by email to peter@macbrownlaw.co.nz and copied to richard@leftbank.nz