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Real Estate

## Architect Elenberg Fraser, consultants hit for Lacrosse cladding, not LU Simon



**Michael Bleby**

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Builder LU Simon's consultants — including architecture firm Elenberg Fraser — were liable for the combustible cladding that spread a potentially fatal fire on Melbourne's Lacrosse tower and will pay about \$12 million in damages, a tribunal ruled on Thursday.

While the builder must pay owners \$5.75 million in damages arising from polyethylene-core cladding on the 21-storey tower, Elenberg Fraser, building surveyor Gardner Group and fire engineer Thomas Nicolas must reimburse the builder and pay a further \$6.8 million for replacement of the rest of the cladding, the Victorian Civil and Administrative Tribunal ordered on Thursday.

"The failure to exercise reasonable care by each of Gardner Group, Elenberg Fraser, Thomas Nicolas and [resident] Mr Jean-François Gubitta was a cause of the harm

to LU Simon resulting [in] its breach of the design and construct contract," Judge Ted Woodward said, reading his judgment to a packed courtroom.



The Lacrosse ruling will be a worry for consultants across the building chain. **Wayne Taylor**

The finding surprised many of the lawyers present at the hearing, who expected the builder to bear at least part of the liability for the facade panelling that caught fire.

It is a blow to consultants across the building chain. While Lacrosse and the recent [Neo200 building fires](#) in Melbourne are well known, many other cladding-related claims are yet to make their way through the system.

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"There are hundreds of buildings like Lacrosse and Neo across the country," said construction lawyer Bronwyn Weir, who was not involved in the Lacrosse case.

While LU Simon put combustible cladding that did not meet requirements of the building code at the time, it was not ultimately to blame, Judge Woodward ruled.

"LU Simon breached the warranties of suitability materials, compliance with the law and fitness for purpose implied into its design and construct contract dated 14 May 2010," he said.

"However, LU Simon did not fail to exercise reasonable care in the construction of the Lacrosse tower by installing combustible aluminium composite panels with a core containing polyethylene on the east and west facades of the tower."

Fire raced up the building on the night of 25 November 2014. **BADROCK, Gregory**

Judge Woodward ordered Gardner Group, Elenberg Fraser and Thomas Nicolas to reimburse the builder in proportion to their own liability and pay a further near-\$7 million that has yet to be finalised.

Gardner Group bore 33 per cent liability for the damages claim, Elenberg Fraser 25 per cent and Thomas Nicolas 39 per cent, Judge Woodward ruled. Jean-François Gubitta, the French backpacker whose cigarette triggered the original fire, bore a 3 per cent liability, but no order was made against him.

The final damages sum is less than the [original \\$24 million](#) claimed by the Lacrosse owners, in part because in December they reached [agreement with LU Simon on a \\$5.6 million replacement cost](#), less than [the \\$11 million](#) they had originally expected.

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"I have found that ACPs did not satisfy the deemed-to-satisfy provisions of the Building Code of Australia by operation of clause C1.12(f) or on any other basis and that the opinions of (Gardner Group building surveyor) Mr (Stasi) Galanos and the building surveyor expert witnesses to the contrary were unreasonable," Judge Woodward said.

The judge also said his findings on the use of PE-core cladding on Lacrosse were not intended to be a judgment on the use of the material generally and that it could be used safely in certain circumstances.

"There may well be particular applications (such as signage or decorative features) where ACPs, even with a 100 per cent polyethylene core, can be compliant, including where made subject to an appropriate performance based solution under the Building Code of Australia," he said.

Elenberg Fraser's design defects led to use of the cladding and the architect was also negligent by only providing [LU Simon](#) with preliminary drawings ahead of the Lacrosse construction that were not sufficiently detailed to show how the specified panels met the requirements of the Building Code of Australia, [LU Simon argued at the close of the case](#) in October.

"Although [LU Simon] has a liability to the owners, all these other people owe a liability to it because they breached the contracts they had with LU Simon," barrister Peter Murdoch QC told *The Australian Financial Review* after Thursday's hearing.

LU Simon director Jim Moschoyiannis made a brief response to the ruling.

"LU Simon Builders acknowledges VCAT's findings," Mr Moschoyiannis said. "It is not in a position to comment as it is yet to review the decision in its entirety in consultation with its lawyers."



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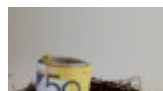


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