

Lendlease files \$8.7M lawsuit over combustible cladding in Docklands high rise



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Lendlease has taken two consultants and a designer to court to recoup \$8.7 million it spent on replacing combustible cladding used on its \$107 million EXO residential apartment block in Melbourne's Docklands.

The lawsuit, filed in the Victoria Supreme Court on October 1, seeks to cover the costs of Lendlease's efforts to replace the Alucobond PE cladding used on the EXO building after an April 2016 notice by the Victorian Building Authority deemed it to be non-compliant and combustible.

The lawsuit targets building surveyor and consultant McKenzie Group Consulting and its employee Vince Panuccio, fire safety engineering and design consultant Norman Disney & Young, and façade and cladding designer and installation specialist Minesco.

"Lendlease claims against the defendants in this proceeding for recovery of costs associated with the performance of the façade works," the lawsuit says.

Lendlease was engaged in October 2011 to design and construct the 12-storey EXO building containing 96 apartments plus ground floor retail stores. The \$107 million project was completed by 2013.

After the deadly fire at the Lacrosse apartment building in Docklands in November 2014, the VBA conducted audits of cladding installed on apartments in Melbourne and notified Lendlease the Alucobond PE cladding on the EXO building was non-compliant because it contained combustible external wall cladding, linings and attachments.

Lendlease and the building's owner corporation engaged North Projects Pty Ltd to conduct the rectification in December 2017. After spending around \$8.7 million in costs, the cladding was replaced and the building was compliant in March 2019.

McKenzie is accused of breaching its duty of care and contractual obligations by recommending the use of the Alucobond PE cladding in February 2012. Panuccio is also alleged to have breached his duty of care to Lendlease as the individual who made the recommendation.

“The advice constituted a breach of the McKenzie contract and the McKenzie duty of care in that, at all material times: (a) the use of Alucobond PE cladding for the EXO apartments project was not compliant with legislative requirements, including the [Building Code of Australia]; and (b) it was not acceptable to use Alucobond PE cladding for the EXO apartments project,” Lendlease’s lawsuit says.

Further breaches arose from two building permits issued by McKenzie which failed to correct the consultancy firm’s earlier advice on the suitability of the cladding, Lendlease claims.

“McKenzie should not have issued the stage 6 building permit and the stage 8 building permit in circumstances where McKenzie had insufficient information, and failed to request information, to ensure that despite the advice, non-compliant (combustible) cladding such as Alucobond PE cladding would not be used in the EXO apartments project.”

McKenzie and Panuccio also also accused of contravening the Australian Consumer Law by making misleading or deceptive statements regarding the cladding.

NDY allegedly also breached its duty of care to Lendlease by failing to properly conduct its fire and safety inspection of the EXO apartment and identify the non-compliant cladding.

“In carrying out the fire safety engineering services, NDY failed: (A) to give consideration as to whether the aluminium composite panel cladding for the EXO apartments project complied with the BCA; (B) to give consideration as to whether the aluminium composite panel cladding for the EXO apartments project might be a fire safety risk; (C) to advise that the use of combustible cladding material for the EXO apartments project, did not comply with the BCA,” the lawsuit alleges.

A \$4.4 million subcontract with Minesco allegedly indemnifies Lendlease for the costs of replacing the cladding, with the building developer claiming that Minesco was required to ensure that all materials were “suitable in all respects for their intended purpose”.

“In breach of the subcontract, the subcontractor warranty deed and the subcontractor duty of care, the design and construct works carried out by Minesco involved the use of non-compliant (combustible) cladding as part of the external walls of the building,” Lendlease alleges.

A class action by William Roberts has been also launched by Australian owner’s corporations against cladding manufacturer 3A Composites and Australian distributor Halifax Vogal Group [for allegedly misrepresenting the quality of the Alucobond PE cladding](#).

Lawyerly has contacted McKenzie, NDY and Minesco for comment.

Lendlease is represented by Nicholas Pane QC and Roman Rozenberg, instructed by MinterEllison.

The case is Lendlease Building Pty Ltd v McKenzie Group Consulting (Vic) Pty Ltd & Ors.