
Fire risk fears: Apartment owners, Argosy suing aluminium panel makers, suppliers



By [Anne Gibson](#)

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Bay of Plenty apartment owners and NZX-listed Argosy Property are suing parties who made and supplied an aluminium building cladding product identified in New Zealand as a potential fire risk.

The buildings involved are a large multi-unit Mt Maunganui apartment complex, one of Auckland's biggest outdoor retail centres visited by thousands daily at Albany and Countdown's 5.9ha South Auckland distribution centre and head office.

Argosy owns the \$161 million bulk retail Albany Mega Centre on Don McKinnon Drive on Auckland's North Shore.

It also owns a \$123m 59,000sq m distribution centre leased to Countdown at Favona Rd, Māngere. Both were named in the court cases.

Owners of Mt Maunganui's Cutterscove Resort Apartments and Argosy Property No 1, owned by Argosy Property with a \$1 billion market capitalisation, have hired Jim Farmer KC.

Alan Galbraith KC is representing the cladding manufacturer in the case, yet to go to a full hearing.

Cutterscove and Argosy lodged a claim in the High Court at Auckland against German manufacturer 3a Composites GmbH, supplier Terminus 2 and importer/distributor Skellerup Industries for selling cladding under the Alucobond PE brand.

Cutterscove markets itself as stylish and spacious home-away-from-home with tennis court, pool, spa, sauna, gym, golf driving net, mini-golf, barbecues and more.

Argosy's chief executive Peter Mence says most of the cladding at its Albany and Māngere properties has been replaced.

"We take risk seriously across the portfolio and report regularly to the board on that and a number of other issues."

A decision from Justice Pheroze Jagose this month said Cutterscove owners previously spent \$9m recladding the exterior of the three-level building with a basement and 39 units.

Body Corporate 91535 and Argosy claimed Alucobond cladding was combustible.

They claimed when Alucobond was used as cladding on external walls or other building elements there was risk that in a fire, the Alucobond flammable core could cause or contribute to a fire's rapid spread and severity.

They claimed such a fire in a building risked "loss of life and damage to the building and adjacent buildings".

The plaintiff said in recent years, there was growing recognition aluminium composite panels (ACP) with polyethylene cores like Alucobond were unfit for use as exterior building cladding because of the risk of fuelling the rapid spread of fire.

They cited an inquiry into London's Grenfell Tower fire, which found the main reason the fire spread so fast was because of ACP panels with polyethylene cores that fuelled the fatal blaze.

Cutterscove got the panels between 2006 and 2008.

Argosy said its Albany and Māngere buildings got the cladding around 2011.

Cutterscove and Argosy are suing for breach of the Consumer Guarantees Act, negligence, negligent misstatement and breach of the Fair Trading Act.

Justice Paul Davison's ruling in May said Cutterscove and Argosy had "a good arguable case" against the first defendants.

But the defendants argued "combustibility" did not necessarily signal a problem or defect with cladding.

Globally recognised ways to show building compliance for external wall cladding systems included all types of aluminium composite panels, high-pressure laminated and other combustible cladding systems, the defendants argued.

Kaneba acknowledged supplying and installing Alucobond panels to 22 Auckland and Wellington buildings.

Minor quantities included materials for a 10sq m pedestrian link bridge between Argosy's Māngere buildings, which are Woolworths New Zealand's main Auckland distribution centre and head office.

Galbraith, arguing against the Cutterscove/Argosy action, said for a Fair Trading Act claim to work, there must have been representation made and relied upon by someone else.

Yet the plaintiffs had failed to produce any evidence that Germany's 3A Composites GmbH made representations relating to the supply of products in New Zealand on which plaintiffs relied, he told the court.

None of the plaintiffs' witnesses asserted they or their agents received or relied on any representations made by the Germans, Galbraith said in one preliminary hearing in the matter.

Cutterscove and Argosy struck a deal with a litigation funder to bring the action.

A West Australian company has agreed to pay for the proceedings via a Cayman Islands' fund. Cutterscove acknowledges the court proceeding would otherwise need to be paid for by levies raised from unit owners.

Cutterscove owners added: "There are many buildings in New Zealand that were or are fitted with Alucobond PE core cladding."

They cited lists of buildings, published by Auckland, Wellington and Christchurch that have or had aluminium composite panel cladding.

The Herald has previously [reported](#) on the issue when more than 150 buildings were checked for potential fire risks in an Auckland Council investigation last decade.

Even before London's 2017 Grenfell Tower tragedy, the council was looking into fire-safety issues, spurred by a 2014 Melbourne fire where a discarded cigarette at the Lacrosse Apartments cause a blaze that spread rapidly, fuelled by combustible cladding on the building's exterior.

Burning cladding may also have accelerated the Grenfell Tower [blaze](#), which killed more than 70 people.

The council identified more than 150 buildings that may have some aluminium composite panel (ACP) cladding.

But Ian McCormick, general manager building control, said no building was identified in 2017 that either raised immediate life safety concerns or that would be considered high risk.

The Cutterscove/Argosy case is yet to go to a full hearing.