

Legalquotes News

PROVIDED BY RANKIN NATHAN LAWYERS

HOME OWNERS – WAS THE BUILDER NEGLIGENT?

Purchasers of property hope that over time, the value of their property will increase and when it is time to move on, they want to sell it to the next person and realise that increased value. The person who subsequently buys the house is also hoping for the same things.

But what if the house turns out to be defective as a result of the builder's negligence and when you sell it, you lose money? As a subsequent purchaser, you generally will have had nothing to do with the way the house was built. Is there anything that can be done?

In Bryan v Maloney the High Court held that a builder owes a duty to a subsequent purchaser of a house to take reasonable care to avoid economic loss being sustained by the purchaser by reason of a decrease in the value of the home as a result of inadequate footings.

In 1979, Mr Bryan, a professional builder, built a house for Mrs Manion pursuant to an ordinary building contract. Mrs Manion later sold the house to the Quittendens and in 1986, Mrs Maloney purchased the house from them. Mrs Maloney inspected the house three times before deciding to buy it. She couldn't see any evidence of cracking on the outside walls nor could she see any other defects. She decided it looked like "it was a good solid house" and she thought that "it would [have been] built properly", so she decided to buy it.

The house was located in an area containing reactive clay soils which

required special precautions to be taken against failure of building footings. About six months after Mrs Maloney bought the house, cracks began to appear in the walls and the damage to the house became extensive. It was found that the reason for the cracking was that the house had been built by Mr Bryan with footings which were inadequate to withstand the seasonal changes in the clay soil. As a result, the value of the house decreased. Mrs Maloney claimed that she had suffered damage, by way of economic loss, as a result of having to have the defects in the house rectified. Importantly, the defects in the house were unable to be detected at the time Mrs Maloney purchased the house.

It was agreed, among other things, that Mr Bryan was negligent in building the house with inadequate footings and that the damage (economic loss) was a foreseeable consequence of Mr Bryan's negligence. The issue before the High Court was solely whether Mr Bryan owed Mrs Maloney, as a subsequent purchaser of the house, a duty of care under the law of negligence.

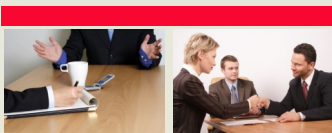
The Court ultimately concluded that it is obviously foreseeable by a professional builder that the negligent construction of a house with inadequate footings is likely to cause economic loss, of the kind suffered by Mrs Maloney, to the owner of the house. When such economic loss is eventually sustained and there is no intervening negligence or causative event, the causal proximity between the loss and the builder's lack of reasonable care is not extinguished by either lapse of time, nor by change of ownership.



More recently, in Woolcock Street Investments Pty Ltd v CDG Pty Ltd the High Court considered the question of whether a professional engineer who negligently designed the structure of a commercial building was liable for economic loss to a subsequent purchaser of the building. Interestingly, the principles enunciated in Bryan v Maloney were not extended to cases involving commercial buildings.

However, in Woolcock, a differently constituted High Court noted that in Bryan v Maloney, significant attention was given to the notion of proximity, and since the doctrine of proximity had been rejected by the High Court in 2001, the significance of Bryan v Maloney had been diminished.

Whilst Bryan v Maloney has not been entirely overruled, it seems that the High Court is yet to clarify the liability of builders to subsequent owners under the ordinary laws of negligence. If anything, the issue has been further complicated by recent decisions and the shift from reliance on proximity to vulnerability has arguably added little to the question of when a duty of care will be owed.



Rankin Nathan Lawyers

1300 727 813

NEWCASTLE • SYDNEY • PERTH • CANBERRA

© Rankin Nathan Lawyers 2008

