

## First NZ Properties Ltd

First NZ Properties Limited is a 100% owner of Symonds110 Limited and on 7 December New Zealand Property Management Limited and 110 Symonds Limited filed proceedings in the High Court in Auckland against Symonds110 Ltd, Michael Miller, Paul Mephan and Investment Services Limited. The claim against Symonds110 Limited is in relation to the sale of the property situated at 110 Symonds St Auckland (the property), and in particular the fact that the property contains an amount of aluminium composite panel cladding.

The claim alleges the Auckland City Council had ascertained that the property included a significant amount of aluminium composite panel cladding likely to contain a polyethylene core, that this is combustible and as a result there were a number of fire safety compliance issues that needed to be addressed to maintain ongoing compliance with the building code, and the standard of building fire safety systems and egress provisions of the building warrant of fitness. It is alleged that this information was provided to Symonds110 Ltd in a letter from the Auckland City Council.

The sale and purchase agreement for the sale of property contained warranties that

1. information provided by Symonds110 Ltd to the purchaser was true, not misleading, complete, accurate and correct in all material respects
2. Symonds110 Ltd had not received any notice from any third party directly affecting the property
3. Symonds110 Ltd was not in material breach of any obligation affecting the property
4. Symonds110 Ltd had not knowingly or deliberately withheld from the purchaser any information which could reasonably be expected to be material in the context of the property.

It was also a term of the sale and purchase agreement that the purchaser would undertake a due diligence investigation.

The purchasers asked a number of due diligence questions in relation to the property and January and March 2019, and responses were provided to the purchaser. It is alleged that Symonds110 Ltd did not disclose or admit the existence of, or otherwise note the contents of the Auckland City Council letter regarding the aluminium composite panel cladding. The purchaser confirmed the sale and purchase agreement as unconditional on 29 March 2019 and settlement was completed on 16 October 2019.

The claim alleges as against Symonds110 Ltd that the failure to disclose the Auckland City Council letter amounts to a breach of the obligations under the sale and purchase agreement by breaching the warranties given. A claim is also made that the failure to give accurate responses to the due diligence questions amounts to misleading or deceptive conduct pursuant to the Fair trading act 1986. The claim does not specify the actual losses suffered by 110 Symonds Ltd. It is however alleged that loss will be suffered by reason of the cost of the remedial work to the building required to reduce or eliminate the risk of fire, loss of rental income and other losses such as increase in insurance premiums, costs of building safety assessments and costs as a consequence of undertaking remedial work.

Symonds110 Ltd has instructed its lawyers to file a defence to the claim. This is due to be filed by 10 February 2022.

For further information email to: [info@fssmanagement.co.nz](mailto:info@fssmanagement.co.nz)