

**JOHN HOLLAND CONSTRUCTION AND ENGINEERING PTY LTD v MAJORCA
PROJECTS PTY LTD & ANOR (1996) 13 BCL 235
Supreme Court of Victoria – 26 July 1996**

FACTS

The Majorca building is an Art Deco medium rise commercial building at 258 Flinders Lane, Melbourne. Majorca Projects Pty Ltd (“Majorca”) entered into a JCC contract with John Holland Construction and Engineering Pty Ltd (“John Holland”) to refurbish the building and to convert it into residential apartments with retail tenancies on the ground floor at a price of \$2.8 million. Majorca engaged Bruce Henderson (“Henderson”) as Architect to administer the contract. The contract was substantially delayed, a dispute arose and Majorca went into liquidation.

John Holland contended that Henderson owed a duty of care the content of which was a duty to act fairly and impartially in carrying out its functions as certified under the contract. John Holland contended that, as a consequence, it suffered loss and damage in the amount which might be found to be owing by Majorca to John Holland. That is, because of Henderson’s breaches, Majorca did not pay John Holland the amounts properly owing to it under the contract and that Majorca is now unable to make these payments. In particular, John Holland contended that Henderson acted unfairly and impartially by not giving John Holland an opportunity to respond to representations from Majorca and by having regard exclusively or predominantly to the interests of Majorca and not the interests of John Holland.

Henderson submitted that it had no responsibility because to assume an obligation to act in the interests of John Holland was not its function.

ISSUE

Whether certifying Architect under the contract owed duty to builder to act fairly and impartially in carrying out its functions as certifier and assessor.

FINDING

The Court found that the Architect did not owe the Builder a duty of care but noted that the community would expect an Architect to exercise its onerous responsibilities with due care and without partiality or unfairness.

QUOTE

Byrne J at 29 said:

The responsibility in question here is one to act fairly and impartially, to have regard to the interests of both the Builder and Proprietor. These interests are served by a certifier making decisions which are professional, careful and even-handed, not in the interests of any one party... It involves an examination of the terms of the building contract notwithstanding that the Architect is not a party to it... In my opinion, it is clear from [the provisions of the contract] that the question of the rights and remedies of the Builder for acts and decisions of the Architect were considered by the Builder and Proprietor, and in many cases, dealt with by making the Builder responsible in some cases for loss suffered as a consequence of those decisions, and by giving to the Proprietor the responsibility of supporting them upon review before the Court or before an arbitrator if it so chose, and at its own risk of an order for costs.

Byrne J after considering the Architect’s experience of 12 years, concluded:

Against this background, and given that state of the law or negligence as it then stood, and given the well-established common law entitlements of the Builder in the case of fraud, corruption or collusion between the certifying Architect and Proprietor, it is in my opinion, not appropriate for me to seek to engraft upon the contractual background a tortious obligation of the kind contended for by the Builder. There is in this case no room for a duty of care owed by the Architect to the Builder the relevant content of which was a duty to act fairly and impartially in carrying out its functions...

IMPACT

This case stands for the proposition that Architects do not owe a duty of care, and are not directly liable, to Builders under a consortium Contract.

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