

Casefile: Developments in Building Defects Claims



Changes and counterbalancing measures for residential building defects claims

Joint venture arrangements

The case of *Ace Woollahra Pty Ltd v The Owners – Strata Plan 61442 & Anor* [2010] NSWCA 101 provided that where a builder contracted with a non-land owning joint venturer the statutory warranties against the builder were displaced and left real questions on the ability to rely on the home warranty insurance.

The NSW Government responded with urgent changes by way of the Home Building Amendment (Warranties and Insurance) Act 2010 which in part allowed the right to claim against builders and insurers where the builder contracted with a non-land owning joint venturer.

Interestingly, the liability of a developer and joint venturer in the above situation is not clear. Also unclear is, whether or not subcontractors are now liable under the amendments.

Proportionate liability

The case of *Owners Corporation SP 72357 v Dasco Constructions Pty Limited & Ors* [2010] NSWSC 819 which followed the decision of *The Owners Strata Plan v Brookfield Multiplex Limited* [2010] NSWSC 360 permitted the builder to argue its case that it was not liable for building defects to the extent that subcontractors could be found liable.

Interestingly, as a possible counterbalancing measure, the case of *Aquagenics Pty Ltd v Break O’Day Council* [2010] TASFC 3 found that the builder could not rely on proportionate liability where the construction contract contained a provision that the builder was liable for its subcontractors.

There are still many issues to be resolved in relation to proportionate liability.

KEY POINTS

- This area of law continues to evolve and owners corporations should seek specialist legal advice.
- The construction contract is a very important document in building defects claims both for ascertaining who contracted with the builder and whether or not an owners corporation can seek to refute claims of proportionate liability.



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Only some of the aspects of these cases are dealt with here. There are many legal issues in each specific case and the complicated defects claim process generally. This document is not legal advice and you should seek legal advice regarding any of the issues referred to.