

BANNERMANS LAWYERS

CASEFILE:

Developments in building defect claims

Managing costs is an important aspect of Building Defect Claims. The Supreme Court recently considered this.

New tool to help owners recover costs in defects claims

In *Owners Strata Plan 62327 v Vero [2009] NSWSC 908*, the owners commenced proceedings to dispute an unsatisfactory response from their insurer to a claim for defects. The defects claim was settled - with the insurer accepting liability for a total of \$2.7 million - however, the insurer would not agree to pay the owners' costs of running the proceedings.

The Court awarded the owners a substantial 80% of their costs, finding in summary that the owners were entitled to recovery as they had acted reasonably and were pursuing a genuine claim.

This precedent should serve as an extra tool to

help owners corporations achieve successful settlements of defects claims and recover their costs without the need for further litigation.

Settlement and costs

One of the key elements of most out-of-court settlements is the withdrawal of the proceedings by the Plaintiff. Ordinarily the issue of costs will be dealt with in the settlement agreement.

If agreement cannot be reached on costs, procedural rules place the onus on the owners corporation as Plaintiff to show that it is entitled to its costs - a fact which some Defendants seek to take advantage of to force the Plaintiff to argue the issue in court.



KEY POINTS

Some key points:

1. Owners corporations who settle their defects litigation may be able to recover substantial costs in court if the other parties refuse to pay.
2. This area of law is complex and important new cases are regularly decided. Owners corporations should always seek legal advice regarding their defects claims.