

Building Defects Case Note: The Importance of Being... Armed with Timely Legal and Expert Advice

Building Defects – Lessons from the ACT experience

ACT owners corporations are experiencing the same practical difficulties as NSW when dealing with building defects.

A recent ACT Supreme Court decision provides some guidance for owners corporations, whether ACT or NSW, when dealing with builders and developers in relation to building defects. The case is *The Owners – Units Plan No 1917 v Koundouris* [2016] ACTSC 96. It involved a small strata scheme which began in 2001.

Defects were present from the outset and were raised by the owners corporation. The builder/developer spent 5 years promising to fix the defects, but ultimately did not. After the statutory warranty had expired the most of the work, the builder/developer began ignoring requests to fix or contribute to fixing the defects.

When the owners corporation finally decided to get legal and expert advice, the time limits for bringing action to enforce the statutory warranties had expired for most of its losses. The owners corporation attempted various other actions against the builder/developer to try to get around the time limitation issues, such as negligence and misleading and deceptive conduct claims. For example, the owners corporation allege that the builder/developer was liable for having misled the owners corporation when it claimed to have fixed the defects. However, the owners corporation was ultimately unsuccessful.

The Court was very critical of the owners corporation's delay in obtaining independent legal and expert advice, when it was evident there were defects and declined requests for extensions of time to commence proceedings to enforce the statutory warranties. The work carried out by the builder/developer, which was not carried out under a contract, did not operate to create new warranty periods or extend the warranty periods for the original work.

Other interesting findings:

- Individual lot owners were the proper persons to recover compensation for defects in the common property arising from breach of statutory warranties.
- No duty of care was owed by the builder or supervisor of the builder.

The clear lesson from this, whether in the ACT or NSW, is that an owners corporation must, on identifying building defect issues, take prompt action to address those issues. Initially, this would involve engaging lawyers to advise on the way forward, with a view to engaging further experts and taking appropriate action while it can still be taken.

We have advised in many such matters and can assist you in addressing your building defect issues in a satisfactory and cost-effective way.

Key takeaways

- Owners corporations must act promptly upon identifying building defects to avoid losing their rights.
- Delays in obtaining legal advice can lead to the expiration of statutory warranties.
- Individual lot owners are entitled to recover compensation for defects in common property.
- The builder or supervisor may not owe a duty of care in certain circumstances.
- Engaging legal and expert advice early can lead to more effective resolutions of building defect issues.

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