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A GREAT WIN FOR OWNERS CORPORATIONS IN NSW!

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On 24 August 2022, the New South Wales Supreme Court in the case of *The Owners – Strata Plan No. 90018 v Parkview Constructions Pty Ltd* [2022] NSWSC 1123 confirmed that an owners corporation can add to an existing claim for a breach of statutory warranties new defects that may manifest after the owners corporation has commenced its legal action, even if the warranty period for those defects has expired at the time they are added to the claim.

In the *Parkview* case, the owners corporation sought the Court's permission to add new defects to its claim against the builder. The owners corporation argued that it was able to add new defects to its claim, as further particulars of its existing claim, because the new defects were part of the same cause of action which was a claim brought for a breach of statutory warranties under the *Home Building Act 1989 (HBA)*.

The builder opposed the attempt by the owners corporation to be granted permission to amend its claim to include new defects on the basis that the addition of any new defect to the claim was actually commencing a new claim for which it was already time barred.

The Supreme Court disagreed with the builder's argument. The Court said that a breach of the statutory warranties under the *Home Building Act 1989* gives rise to only one cause of action, and it does not give rise to separate causes of action or claims. In other words, the Supreme Court confirmed that the owners corporation was able to add new defects once it had commenced legal proceedings and those defects are discovered late in the legal proceedings but before the conclusion of the case.

The case is a big win for owners corporations because it means than owners corporation which may find itself in a position where it has already commenced legal proceedings for defects arising due to a breach of statutory warranties under the *Home Building Act 1989* and then discovers, whilst the case is on foot, that further defects have manifested can add the new defects to its claim, even though the 2 or 6 year warranty period for minor or major defects may have already expired.

An owners corporation will be entitled to add the new defects to its existing claim because the new defects will be regarded as adding further particulars to the existing claim rather than starting a new claim.

Conclusion

An owners corporation should be vigilant once legal proceedings for breach of statutory warranties have been commenced so that if there is any indication that further defects have manifested the owners corporation promptly begins the process of investigating the new defects and adding them to its legal action so that they form part of the claim against the builder or developer. Doing so will ensure that the owners corporation does not miss out on making a claim for the newly discovered defects.

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JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law, building defects and levy collection.

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