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DAMAGES CLAIM FOR NEGLIGENCE AGAINST BUILDING MANAGERS AND STRATA MANAGERS – NCAT OPENS THE DOOR!

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DAMAGES CLAIMS FOR NEGLIGENCE AGAINST BUILDING MANAGERS AND STRATA MANAGERS – NCAT OPENS THE DOOR!

A recent decision of the Appeal Panel of NCAT has not ruled out the possibility that NCAT may be able to award damages to a lot owner for negligence by a strata manager and/or building manager of a strata scheme.

Background

Earlier this year a lot owner brought a claim in NCAT alleging, among other things, that a strata managing agent and the building manager were each liable to her for damages for breach of a common law duty of care to carry out functions with due care, skill and diligence. This claim was brought under the general decision-making power of the Tribunal, and notwithstanding that there is no explicit power granted to NCAT under the *Strata Schemes Management Act 2015* (the Act) to award damages to a lot owner for negligence by a strata manager or building manager.

The claims related to water ingress alleged to be caused by defects in common property which, it was alleged, caused the lot owner to suffer loss and damage.

In the original decision before NCAT, the Tribunal dismissed the claims against the strata manager and building manager essentially on the basis that the Act did not provide an explicit power for the Tribunal to award damages in such circumstances.

The Decision of the Appeal Panel

The Appeal Panel found, based upon previous decisions considering the Tribunal's powers that:

- the powers conferred on the Tribunal were “broad”;
- those powers can be understood to encompass an order for the payment of damages;
- that power may not be limited to the power which has traditionally been ascribed to the Tribunal to award damages to a lot owner for the failure of an owners corporation to maintain and repair common property; and
- in particular, that power may include claims against the building manager and strata manager.

What Does This Mean?

The Appeal Panel did not make a final decision as to whether a claim that a strata manager and/or building manager have been negligent in exercising their functions is one which can be adjudicated upon by the NCAT. However, the matter has been sent back to the Tribunal to consider this issue.

These proceedings are listed for Hearing before NCAT in early 2023, and we will need to await that decision to understand further whether the Tribunal considers that it has jurisdiction to adjudicate on, and award damages for, a claim for negligence against a strata manager and/or a building manager in relation to their alleged failure to properly exercise their functions.

Potentially this is an entirely new area in relation to which lot owners will be able to make a claim in NCAT where they have suffered loss and damage.

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About JS Mueller & Co Lawyers

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 including by-laws, building defects and levy collections.

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