

Court Widens People Liable for Building Defects!

Building Defects – Who is Liable?

Can the director of a building company that is responsible for the construction of a new strata building be held personally liable for defects in the building?

The *Design and Building Practitioners Act 2020* (**Act**) was introduced in 2020 and provides that a duty of care is owed by “a person who carries out construction work” to an owners corporation to avoid defects in the construction of the building. But who exactly is classified as “a person who carries out construction work”?

Is “a person who carries out construction work” limited to the entity that was contracted to do the work such as the builder or does it also include all persons involved in completing the project such as a supervisor, project manager and even the director of the builder’s company or the developer?

Personal Liability of Project Manager

A recent decision by the Supreme Court of NSW has found that the husband of a director of a building company was personally liable for defective building works done by the builder under the Act because he acted as the project manager and supervisor of the builder: see *Goodwin Street Developments Pty Ltd atf Jesmond Unit Trust v DSD Builders Pty Ltd (in liq)* [\[2022\] NSWSC 624](#).

In this case, the builder was placed into liquidation and the developer brought proceedings against Mr Roberts the husband of a director of the builder. According to the Court, Mr Roberts was a project manager of the builder, supervising

construction works for the project. Therefore, Mr Roberts was found to be “a person who carried out construction work” under the Act and was found liable for the defects.

Liability of Developer

In another recent Supreme Court case, an owners corporation sued the builder and developer for damages arising from defects.

The Court found, among other things, that a developer could be held liable for defects under the Act as a person who carried out construction work.

The Court also said that under the Act, a person could be liable for defects if they could (but did not necessarily) have control of the building works: see *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* [2022] NSWSC 659.

Conclusion

These cases have far reaching consequences for directors, supervisors, project managers, developers and sub-contractors involved in construction work who all could be liable to owners corporations for defects under the Act, even for work done up to 10 years ago (as the Act is retrospective). However, for those persons to be liable, it must be proven that they have had or could have had some control over the building works.

Contact Us

For all strata law advice including by-laws, building defects and levy collections contact our specialist NSW and Sydney strata lawyers [here](#) or call 02 9562 1266, we’re happy to assist.