

Mueller's Landmark Win: Developers Fully Liable

In a significant win for owners corporations, JS Mueller & Co Strata Lawyers recently secured a decisive landmark victory in the Court of Appeal, upholding a freezing order against a developer – *Aqualand North Sydney Lavender Development Pty Ltd v The Owners – Strata Plan No. 102081 [2025] NSWCA 143*

This groundbreaking decision, which prevents developers from dissipating assets, sets a new precedent and will have a substantial impact on the industry, ensuring funds are available to rectify building defects.

Below, you'll find our article about the Supreme Court decision granting a freezing order against a developer at the request of an owners corporation. This decision was upheld by the Court of Appeal.

Introduction

The property development industry has become more astute in recent years. This has resulted in property developers putting in place corporate structures that are intended to protect their assets. This often results in owners corporations being unable to recover compensation from developers to cover the costs to fix defects that affect their buildings. So what can be done to avoid that problem?

In this article we take a look at a recent case in which an owners corporation represented by JS Mueller & Co succeeded in convincing the Supreme Court to make a freezing order against a developer to prevent the developer dissipating its assets to ensure that the developer would have sufficient assets to pay any compensation the owners corporation was awarded by the Court to cover the cost to fix building defects.

The Facts

There is a mixed use building in Milsons Point, Sydney containing 125 residential lots and 2 commercial lots. The building was completed in July 2021. Since August 2021, the developer has been selling the residential lots in the ordinary course. The developer has now sold 121 of the 125 residential lots. The developer still owns 4 of the residential lots. They are effectively the developer's only assets.

The building contains defects. The owners corporation has sued the developer in the Supreme Court for damages arising out of those defects. In the case, the owners corporation has obtained evidence from a quantity surveyor to the effect that the estimated cost to rectify the defects is in the order of \$10.6 million.

The Problem

The owners corporation became concerned that the developer's only assets were the four residential lots that it owned in the building and that once those lots were sold, the sale proceeds would be dissipated and the developer would have no assets left to pay any damages the owners corporation was awarded by the Court. That would have rendered to the continuation of the court case against the developer pointless.

Application for Freezing Order

In November 2024 the owners corporation applied to the Supreme Court for a freezing order to be made against the developer. The purpose of that order was to prevent the developer from disposing of its assets up to the value of \$10.6 million being the amount of the owners corporation's claim. The developer resisted the application for the freezing order and argued that there was no basis for the Court to make that order.

The Decision

On 6 February 2025 the Supreme Court published its decision in which it concluded that it was appropriate for a freezing order to be made against the developer generally in the terms sought by the owners corporation. The Court was persuaded that there was a danger that any damages that were awarded to the owners corporation would be wholly or partially unsatisfied because the developer might dispose of its assets once it sells the remaining 4 lots in the building that it still owns. The Court concluded that it was likely that the developer would sell those 4 lots in the future and that it would distribute the profit generated by the sale of the those lots either by way of dividend or as a loan to other members of its corporate group. This was consistent with the way in which the developer had dealt with the proceeds of sale of other lots it had sold in the development.

Conclusion

The case shows that an owners corporation that is concerned that a developer against whom it has made a claim for damages arising from building defects can take steps to protect its interests and ensure that the developer does not dissipate its assets to avoid having to pay damages to the owners corporation. The case shows that the Supreme Court will make freezing orders against developers in appropriate circumstances to safeguard the position of owners corporations who are at risk of being left with nothing if the developers of their strata schemes are able to deal with their assets without restraint.

Case citation: The Owners – Strata Plan No. 102081 v Aqualand Constructions Pty Ltd [2025] NSWSC 31

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Adrian Mueller I BCOM LLB FACCAL I Partner

Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata lawyers in Australia. [Profile](#) I [Linked](#)

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