

Replacing Common Property Tiles – Must they Match?

The Scenario

Mr Smith owns a residential lot in a strata building in Sydney. The floor tiles in Mr Smith's bathroom have cracked and are damaged beyond repair. The building was constructed 30 years ago so matching replacement tiles cannot be found. Is Mr Smith entitled to insist on the owners corporation re-tiling his whole bathroom so that the bathroom tiles have a uniform finish? In this article we explore the answer to that question.

The Law

An owners corporation has a statutory duty to properly maintain and keep in good repair the common property and, where necessary to renew or replace any fixtures or fittings that form part of the common property under section 106 of the *Strata Schemes Management Act 2015*.

This duty requires the owners corporation to replace an item of common property when it is reasonably necessary to do so because, for example, the item has been damaged beyond repair: *Glenquarry Park Investments Pty Ltd v Hegyesi* [2019] NSWSC425.

So what happens when tiles on the floor or a wall of a bathroom that form part of the common property are damaged beyond repair but matching tiles cannot be found. Can the owners corporation just replace the damaged tiles doing the best it can? Or does the owners corporation have to re-tile the entire bathroom to ensure a uniform tiled finish?

Replacing Damaged Tiles

Where tiles are damaged beyond repair and matching tiles cannot be sourced, the duty of the owners corporation is to use replacement tiles that are substantially similar in appearance, characteristics, quality and amenity to the existing tiles. This can require the owners corporation to replace a larger section of tiles to achieve substantial similarity: *Selkirk v The Owners – Strata Plan No. 2661* [2024] NSWCATAP 17.

However, this does not necessarily mean that, where matching tiles cannot be found, the owners corporation is responsible for re-tiling the entire bathroom. There are a number of cases which make this clear.

The Cases

1. In *Stolfa v Owners Strata Plan 4366 & ors* [2010] NSWSC 1507 a lot owner did work which damaged five tiles on a bathroom wall in another lot. The owner of the damaged bathroom applied for an order that the other owner compensate her for the cost to re-tile the whole bathroom because matching tiles could not be found. The Court rejected that claim and was unpersuaded that such a course was reasonable, particularly in the absence of evidence establishing that a reasonably approximate matching tile, albeit not a precise match, was unachievable. The Court allowed an amount to cover the cost of re-tiling the damaged wall only.
2. In *Petropoulos v CPD Holdings Pty Ltd t/as The Bathroom Exchange (No 2)* [2018] NSWCATAP 233 a builder renovated a bathroom and an ensuite bathroom for a homeowner but built the shower recesses too small. The owner wanted the builder to re-tile the whole bathroom floor after enlarging the shower recesses because matching tiles could no longer be found and the owner was concerned

that a patch repair would compromise the waterproofing membrane. NCAT's Appeal Panel rejected the owner's request and concluded that it was reasonable for the builder to attempt to match the tiles rather than completely re-tiling each bathroom. The builder was ordered to ensure that replacement tiles were of the same colour, dimensions and type as the original tiles, or if no identical replacement tiles were available, of a colour that most closely matched the original tiles.

3. In *The Owners – Strata Plan No 74602 v Brookfield Australia Investments Ltd* [2015] NSWSC 1916 an owners corporation sued a builder for defects. The owners corporation alleged that there were waterproofing defects in bathrooms due to incorrectly installed water stop angles as a result of which bathrooms needed to be completely re-tiled due to the difficulties in obtaining matching tiles, even though only a small number of tiles needed to be replaced. The Court concluded that this would amount to the complete demolition and reconstruction of the bathrooms which was unreasonable and unnecessary particularly as there was no evidence of water leakage from the bathrooms.
4. In *SP 62930 v Kell & Rigby Holdings Pty Ltd* [2010] NSWSC 612 an owners corporation sued a builder for various defects including waterproofing defects in bathrooms. The owners corporation asked the Court to order the builder to pay damages to cover the cost of re-tiling all of the bathrooms because matching tiles could not be found and owners were entitled to a uniform tiled finish in their bathrooms. The Court concluded that it would be unreasonable for an owner to insist on replacement of a large quantity of undamaged tiles at great cost if a close match could be found and installed in a place (such as an architectural break) where the joiner of the tiles would not be immediately obvious. The Court held that the floor tiles within the showers in the affected lots should be replaced, making use of an

appropriate existing architectural break, and that it was not reasonable for the owners corporation to insist upon the complete re-tiling of the entirety of the bathrooms.

Analysis

These cases demonstrate that both NCAT and the Supreme Court have rejected claims for entire bathrooms to be re-tiled when a small section of tiles are damaged or defective and perfectly matching tiles cannot be found.

However, in general, the owners corporation will still need to ensure that the work it does to replace the damaged tiles achieves an acceptable aesthetic finish. This may require the owners corporation to re-do more than just replace the damaged tiles. It can require the owners corporation to replace, for example, one or more walls which contain damaged tiles or an entire shower recess by making use of appropriate architectural breaks.

Ultimately, each case turns on its own facts but it will often be the case that it will be unreasonable for an owner to insist on an owners corporation replacing a large quantity of undamaged tiles at great cost if a close match can be found to achieve an acceptable aesthetic finish.



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