



**ROLUKE PTY LTD & ANOR V LAMARO CONSULTANTS PTY LTD &
ANOR [2007] NSWSC 349
Supreme Court of New South Wales 17 April 2007**

FACTS:

The Plaintiffs, Roluke Pty Ltd (Roluke) and Scotts Motors Artarmon Pty Ltd (Scotts) engaged the Defendants Lamaro Consultants Pty Ltd (Lamaro Pty Ltd) and Anthony Vincent Lamaro (Lamaro) as engineering consultants to complete plans of a 3 storey building for the purpose of services and storing cars. An architect was also engaged to prepare the architectural plans.

Cracks had begun to appear in the second and third slabs, permitting the penetration of rainwater through each slab. Lamaro conceded that he had failed to provide a suitable design for a waterproof slab.

ISSUES:

Can the Plaintiffs recover damages for diminution of market value to the building, over and above damages for rectification of the faults and damages for loss of income?

FINDING:

Nicholas J found that the Plaintiffs could claim under a separate head of damage the diminution in market value of the building, but in this case the Plaintiff's had not discharged their onus of proof in proving diminution of market value, *"there was no evidence to support the Plaintiff's proposition that knowledge of the cracks in the market place would adversely affect the buildings value...in the future"*: per Nicholas J [at 104]

QUOTE:

Nicholas J [at 102]

"Although these cases concern claims for damages for the costs of repair to, and diminution in value of, chattels (Payton: a motor vehicle; Davidson: a yacht), I see no reason why, as a matter of principle, a plaintiff's claim in respect of a defectively designed structure should be limited to the costs of repairs where the evidence shows a loss of market value notwithstanding that it has been satisfactorily repaired. Indeed, in Proprietors Units Plan & Ors v Jiniess Pty Ltd & Ors [2000] NTSC 89, Riley, J allowed a claim for the diminution in the market value of units notwithstanding that the building had been repaired. "

IMPACT:

The case illustrates that an owner may be entitled to claim diminution in market value of a structure, so long as they can adduce sufficient evidence of that reduction in market value within the market place and prove a nexus between that diminution and the faults in the structure.