

The Owners Strata Plan 98726 v Elite Realty Development Pty Ltd (No 3) [2024]
NSWSC 673

FACTS

The case of *The Owners Strata Plan 98726 v Elite Realty Development Pty Ltd (No 3) [2024] NSWSC 673* involved a dispute over rectification costs for defects in a three-level residential unit block, consisting of nine units.

The contract for the construction of the apartment block on 19 September 2017 and the works were completed on 11 December 2018.

The owners' corporation brought a claim against the builder for breach of domestic warranties, alleging numerous major and minor defects.

The initial decision was given on 12 April 2024 and the court initially found that the building was riddled with defects. At the time, the court did not address the question of compensation, but set forth a further trial date to set damages.

When the date came for trial, the defence did not appear.

ISSUE

How damages should be awarded for the defects?

FINDING

His Honour, Stevenson J issued a judgment for the plaintiffs in the amount of \$3,080,269.26, as per the recommendations of a number of experts for the plaintiffs. His Honour stated at paragraph 7 of the judgment (emphasis added):

7. *The measure of damages for defective building work is the reasonable costs of rectification, so as to give the plaintiff "the equivalent of a building ... which is substantially in accordance with the contract". [4] The work must be "necessary to produce conformity" with the contract and also "must be a reasonable course to adopt". [5] These are questions of fact to be examined in each case.*

IMPACT

This decision demonstrates the basics of how courts approach compensation for defects.

While there may be reputational reasons to over-offer in response to principal's requests to compensate for defects, as well as commercial reasons to negotiate an efficient compromise; it is still helpful for builders and contractors to be aware of how compensation may be awarded at trial and the expenses which can be encountered.