

How to Seek Compensation for Defective Building Work - Lessons from a Recent NSW Case

The recent NSW Tribunal case of B & W Windows (Residential) Pty Ltd v Sibilija highlights the importance of establishing proof when seeking compensation for defective building work. In this article, we will discuss the key lessons that homeowners can learn from this case when seeking compensation for defective building work.

Proving Liability for Defective Building Work

The first step in seeking compensation for defective building work is to prove liability. To do this, you need to establish that the work is defective and that the contractor is responsible for the defect. In the Sibilija case, the Tribunal found that the windows were leaking due to the contractor's failure to use small joint sealer in the re-fabrication. It is essential to establish the cause of the defect, and it may require expert building evidence.

Proving the Measure of Damages

The next step is to prove the measure of damages. It is not enough to submit an invoice from a third-party builder. Instead, proof is required to demonstrate that all of the rectification work performed was necessary to bring the work into conformity with the contract. In the Sibilija case, the Tribunal concluded that the appropriate method of rectification was the replacement of the windows, and the contractor was liable for the reasonable cost of rectification.

The Importance of Expert Evidence

Expert evidence is essential in proving liability and the measure of damages. In the Sibilija case, the owner's expert provided a breakdown of costs, which the Tribunal accepted as there was no expert building evidence to the contrary. Expert evidence can also help to establish the cause of the defect and to demonstrate that the rectification work was necessary to bring the work into conformity with the contract.

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The Onus of Proving Damages

It is essential to note that the onus of proving the measure of damages lies upon the party seeking to recover damages. In the Sibilica case, the Tribunal made an error of law in finding the contractor liable for the amount of the builder's invoices. The owner had the responsibility of proving that the invoices reflected costs incurred by reason of the contractor's breach of statutory warranties.

Seeking Legal Advice

Seeking legal advice is crucial when seeking compensation for defective building work. A construction lawyer can help you to understand your rights and obligations and to navigate the legal process. A construction lawyer can also provide expert evidence and represent you in legal proceedings.

Conclusion

The Sibilica case demonstrates the importance of establishing proof when seeking compensation for defective building work. Homeowners must prove liability and the measure of damages, which may require expert evidence. The onus of proving damages lies upon the party seeking to recover damages. Seeking legal advice is essential when seeking compensation for defective building work.

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