CREATING STRATA SOLUTIONS

VINC LEGAL

When Ceilings Collapse!

Vinc Legal's recent success in obtaining Compulsory Strata Management.



Our Principal Solicitor, Anna Minassian, recently acted on behalf of a lot owner, Hugh McCullum, to successfully obtain the appointment of a compulsory strata manager for SP15404 in the NSW Civil and Administrative Tribunal.

Background

In this case, it was demonstrated that the Owners Corporation had failed to fulfil its obligations to repair and maintain common property under section 106 of the *Strata Schemes Management Act*, together with a number of other issues which were brought to the Tribunal's attention

In 2019, the roof of one of McCullum's lot's collapsed within hours of initial cracks appearing, causing tonnes of plaster, ceiling boards and fly ash to fall into the lot and blocking the entrance. The tenants, who had been told to evacuate the lot immediately, avoided serious injury or death.

After the repair of the ceiling, at least 9 reports were obtained from various structural engineers all indicating that the building's ceiling and flooring were unstable and recommending works to be undertaken to prevent further ceiling collapses. The owners corporation did not proceed with the recommendations to stabilise the ceilings.

In 2024, a three-metre crack appeared in one of McCullum's other lots. Given the ceiling collapse in 2019, upon noticing this crack, McCullum commenced NCAT proceedings and ensured that the ceiling was made safe.

The owners corporation filed a cross-claim against McCullum (including urgent interim orders) alleging unauthorised works were done by McCullum and therefore McCullum should be responsible for the structural stability of his lot's ceiling. This cross-claim was successfully defended by McCullum.

The Tribunal's Judgement

Ultimately, the Tribunal determined:

- That the OC's duty to repair and maintain common property is strict, and requires **taking active, pre-emptive steps to avoid common property falling into disrepair** and to make sure that the common property continues to function in a proper state. These steps, such as investigative inspection, are to be carried out at the instruction and funding of the Owners Corporation, whether this be through the OC arranging the work at its own cost or paying the lot owners for the cost of the work.[1]
- The consistent identification of the ceiling damage across multiple reports resulted in the ceiling collapse being **reasonably foreseeable**. Further, the actual ceiling collapse in other lots contributed to this foreseeability.[2]
- Obtaining reports is not enough to prevent an order for compulsory appointment. The owners corporation needs to take action to remediate the defects in the building.

The OC was found to have contravened its strict duty to repair and maintain the common property, and a compulsory strata manager was appointed to manage the scheme for a period of 12 months.

The Costs Decision

Our firm then sought and was granted a costs order against the Owners Corporation. The Tribunal determined that special circumstances existed warranting the making of a costs order. The Tribunal held that "the OC clearly breached its admitted duty for years in not properly managing maintenance of the common property", and that "this breach … in terms of the OC's chronic lack of active preventative maintenance on very serious matters lay at the heart of why the lot owners succeeded in their claim". In circumstances where it was clear that our client had no alternative but to apply to

the Tribunal for orders, the Tribunal made orders in favour of McCullum. The Owners Corporation was ordered to pay McCullum's costs of the proceedings as well as reimburse McCullum for any costs paid by him towards the owners corporation's legal costs.

This case is a reminder that the duty to repair and maintain common property is a strict one. The owners corporation must take vigilant action to prevent a building from falling into disrepair.

A complete copy of the judgement can be accessed here:
https://jade.io/article/1180098?at.hl=Strata+Plan+No+15404

Do you need help defending a compulsory appointment?

Do you know we have a 100% success rate in defending compulsory appointments in buildings across NSW? If your building is being threatened with compulsory appointment application, contact us today and we can discuss a strategy to ensure that your Owners Corporation keeps its ability to govern itself.

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Get in touch with Vinc Legal today for specialist Strata Law advice!

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