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When can an Owners Corporation take proceedings?
The Owners – Strata Plan 43551 v Walter Construction Group Pty Limited

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An Owners Corporation's exclusive source of power is the strata legislation, which includes:

- *Strata Schemes (Freehold Development) Act 1973*
- *Strata Schemes (Leasehold Development) Act 1986*; and
- *Strata Schemes Management Act 1996.*

An OC is accordingly restricted to the powers and functions identified in the legislation.

The Supreme Court considered the powers of an OC in *The Owners – Strata Plan No 43551 v Walter Construction Group*. The Court was asked to consider whether each lot holder in a strata scheme is a necessary party to a claim against the builder/developer of the building comprising the strata scheme.

The defendant builder Walter had carried out construction works comprising the strata building. The plaintiff OC alleged that those works, in particular works to the common property, were not carried out in a proper and workmanlike manner. The OC commenced proceedings seeking damages.

29 of the 52 lots comprising the strata plan had been sold after the defects had become manifest.

The Builder's Argument

Walter argued that:

- The OC held the common property as agents for the individual lot holders as principals.
- Unless the strata legislation provides otherwise, the individual lot holders are the only persons entitled to take proceedings and not the OC.
- The only relevant section of the *Strata Schemes Management Act* that allows the OC to take proceedings is section 227, which applies in circumstances where the owners of the lots in a strata scheme are **jointly entitled** to take proceedings.
- As some of the lots in the strata scheme had been sold, the purchasers of those lots would have no cause of action against Walter because they purchased their lots after the defects had become manifest and they knew or should have known about the defects. Accordingly, some of the lot holders were not jointly entitled to take proceedings and therefore the OC was not entitled to take proceedings.

The Court's decision

The Court agreed with Walter and found that the OC had no standing to bring proceedings in its own name as it was not empowered to do so by the strata legislation.

This decision has inherent practical problems for strata schemes. For instance, not all lot owners will wish to be a party to the proceedings. If they are then once they receive the proceeds of their claim they may not wish to proceed with the repairs.

We understand that the plaintiff is considering appealing against this decision.

Please do not hesitate to contact **Russell Kam** of Avendra Singh Strati & Kam Lawyers on 9230 0144 or at ask@asklawyers.com.au if you have any questions in relation to the issues discussed in this commentary.