

Building Practitioners – Personal Liability

The recent decision of George Korfiatis v Termaine Developments Pty Ltd, Andreas Ktori and others (Domestic Building [2008] VCAT 403) has shed further light on the personal liability of a registered builder when a building company enters into a contract with an owner.

Korfiatis as owner entered into three separate contracts with Termaine Developments Pty Ltd to construct town houses in Port Melbourne. Termaine’s director, Mr Ktori, was the registered building practitioner. The three town houses were adjoining and constructed together. Mr Korfiatis alleged that the works were defective and incomplete. He settled with various parties but maintained his claim against Termaine and Ktori for damages. However, Termaine entered into liquidation and Ktori applied for the proceedings against him to be dismissed.

The owner claimed that as a director, Ktori had directed the building company to carry out the works. As Termaine had carried out those works negligently and defectively, the owner claimed Ktori was also jointly and severally liable for the loss and damage as a joint tortfeasor. A separate claim was also made under the *Fair Trading Act 1999* alleging Ktori had made misrepresentations causing the owner loss and damage. The owner claimed that had Ktori as “the builder” not made various statements, the owner would not have entered into the contracts.

The primary issue was whether Ktori owed the owner a separate duty of care separate to the building company.

Senior Member Walker examined the case law in detail. He held that while there were various undertakings of responsibility, the most obvious of which was by Termaine to the owner under the building contract, Ktori as the director did not owe a separate duty of care. Ktori’s responsibility for what he did and did not do was as a director to Termaine, therefore there was no undertaking of responsibility by Ktori to the owner.

Senior Member Walker emphasised that the owner knew Termaine as the building company would be carrying out the work and that Termaine was a limited liability entity. There was also no agreement that Ktori would personally guarantee the building company would perform its obligations.

The Tribunal held that “a company acts as its directors dictate but that does not necessarily mean that a tort committed by the company has

also been committed by its directors”. Senior Member Walker stated that “a director does not appear to be guilty of negligence unless he himself owed a duty of care to the person who suffered the loss”. The outcome was that the claim against the Director was dismissed.

This case highlights that a director of a building company who is also a registered building practitioner may not owe an owner a separate duty of care, so long as that director does not personally enter into a separate agreement with an owner or perform a function which is outside the building contract between the building company and the owner.

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