Chapman v Western Bay of Plenty District Council

Chapman is another robust decision from the Weathertight Homes Tribunal demonstrating that the claimants do not always get what they want. It also illustrates the pitfalls associated with directors of building companies sitting back and failing to manage the construction process. It is a successful result for the council involved, whose liability overall was found to be significantly less than the claim it faced.

Background and claim

The claimant, Mr Chapman, was a subsequent owner of a house built in 2000. The previous owners had engaged Landmark Homes Limited to design, prepare plans and specifications, project manage and build the house.

Mr Chapman purchased the house in November 2003. After living in the house for a number of years, he decided to sell the house in January 2007. As a result of a pre-purchase inspection report provided to a prospective purchaser he discovered weathertightness issues. He applied for an assessor's report in February 2007.

The total claim was for approximately $344,000.00. This included approximately $258,000.00 for the remedial work, consequential costs (accommodation, insurance etc) and interest, as well as a claim for general damages of $44,000.

Council liability

The council avoided liability for the more serious defects to the property. Notably, the council was not found liable for the absence of sealant behind the reveals of windows and workmanship issues such as the use of cut offs of Harditex and the inappropriate fixing of the Harditex sheets. Although the council was found liable for a range of other defects, the tribunal concluded that these defects were such that the total liability of the council should be reduced.

Of the $344,000 claimed against the council, it was found liable for only $140,000 (approximately). If the other parties pay their share of the judgment, the council will end up paying only $17,000.00.

Director liability

The management of the building work by Landmark, and its director, Mr Clarke, was found to be woefully lacking. Mr Clarke operated Landmark in spite of having no building knowledge of his own.

Mr Clarke was found personally liable because he had not put in place project appropriate management to ensure that the building contractors were working in a code compliant way, he signed off plans without ensuring that they were adequately detailed, and he generally made all of the decisions (or failed to make them) that led to the house leaking.

Mr Clarke and Landmark were found liable for 70% of the loss on a concurrent basis.

Failure to maintain by the owner

Sealant had been used throughout the house to ensure that junctions were weathertight. The sealant failed, causing leaks and damage. The tribunal decided that Mr Chapman had failed to maintain the sealant, thereby increasing the likelihood of leaks. The tribunal, in recognising Mr Chapman's responsibility to maintain his house generally and in relation to the sealant, reduced his claim by 10%.

Discounting for defects

The tribunal significantly discounted Mr Chapman's claim for defects which he had claimed for which no party was found responsible. The discounts from the claim totalled $50,000.00. A further $25,000 was deducted from the claim against the council for problems for which the council was held not liable.

General damages

Mr Chapman claimed $44,000.00. The tribunal accepted that general damages were appropriate, but not at anywhere near the level sought. For a start, he was not able to bring a claim for the upset his wife had experienced because she was not an owner. The claimant, a pilot, had moved out whilst the repairs were undertaken, The tribunal found that " ..the claimant was not inconvenienced, did not live in the dwelling during repairs, was not stressed by being present while it was being repaired and is being compensated for

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Page 28 > for themselves when joint working would be beneficial and involving other organisations when this is considered to be an effective approach."

Since 2002, a considerable amount of ratepayer funding has been invested in identifying community outcome statements and establishing monitoring and reporting systems. These systems can now be maintained at relatively little cost on an ongoing basis, resulting in planning information being made regularly available to a wide range of agencies and groups. By definition, monitoring progress toward community outcomes will remain a crucial component of collaborative inter-agency planning, regardless of whether or not it is legislatively required. Monitoring is not an end in itself, but part of an ongoing strategic and adaptive cycle. Continuous improvement can only be achieved if monitoring is linked to a process of strategic thinking, planning, review and response.

Conclusion

The plan-do-monitor-review cycle is practised by all individual councils. However, there is now less incentive for councils to undertake formal collaborative planning with other stakeholders at a community-wide level. The TAFM proposals may result in less data monitoring being undertaken apart from core service monitoring that is required to understand councils' own levels of performance. While this more limited monitoring is useful for describing councils' individual performance stories, it provides an incomplete picture of communities' broader progress stories.

Regardless of one's perspective on the TAFM proposals, there is merit in being cost-effective in identifying, monitoring and reporting community progress. Ultimately, community outcomes monitoring should be about working smarter for community benefit. Having established comprehensive local monitoring systems throughout the country, there may be value in continuing to refine and develop these programmes and regularly reporting key results to the public and other agencies. The level of ratepayer funding applied to these programmes should balance the cost of data collection and reporting against the benefits of more accurate and up-to-date knowledge about community wants and needs.

Page 37 > the cost of alternative arrangements. His work and lifestyle were not affected apart from financial matters for which interest is being sought as damages."

Mr Chapman was awarded $5,000 only.

Conclusion

This case confirms that directors of development companies who are personally involved will not escape liability by leaving the building contractors to build unsupervised. It further illustrates that the tribunal is not prepared to find the council and other parties liable for defects just because they are claimed.

Overall, this was a good outcome for the council involved. Given the discounts made by the tribunal from the claim, it is not surprising that this case is being appealed.

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→ whether a minimum donation amount per pay-period is required, and/or only specified sums (e.g. $5, $10, $50).

Is there a maximum amount that can be donated?

Subject to the terms of your own Scheme, the employee's available salary must first be applied to meet all tax and legal obligations, such as PAYE, child support, student loan deductions and KiwiSaver. Donations can be made from the residual salary.

Does the employer need to provide any reporting to the employee?

The employer needs to provide each employee with a record of their donations and the tax credits that they receive. This could be incorporated with the regular payslip.

Conclusion

There is much to consider around offering payroll-giving to employees, so we urge local authorities to consider their approach and implement a policy in advance of the first requests coming in.