

**The Owners – Strata Plan No 65968 v National Alliance Constructions Pty Limited  
- [2017] NSWSC 62**

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*Supreme Court*

*New South Wales*

**Medium Neutral Citation:** The Owners – Strata Plan No 65968 v National Alliance Constructions Pty Limited [2017] NSWSC 62

**Hearing dates:** 6/02/2017

**Date of orders:** 06 February 2017

**Decision date:** 06 February 2017

**Jurisdiction:** Equity - Technology and Construction List

**Before:** McDougall J

**Decision:** Plaintiff to have judgment against defendant for \$652,473.84 including interest.

**Catchwords:** BUILDING AND CONSTRUCTION – claim for failure to perform work and defective work – withdrawal by defendant’s solicitor – defects in residential building work result of builder’s work – cost of rectification – cost of further home warranty insurance – no question of principle

**Category:** Principal judgment

**Parties:** The Owners – Strata Plan No 65968 (Plaintiff)  
National Alliance Constructions Pty Limited (Defendant)

**Representation:** Counsel:  
D Hand (Plaintiff)  
No appearance (Defendant)

Solicitors:  
Mills Oakley (Plaintiff)  
No appearance (Defendant)

**File Number(s):** 2013/329340

*Judgment (ex tempore – revised 6 february 2017)*

1. **HIS HONOUR:** The plaintiff is the owners corporation of a residential strata title development at Dee Why. The building was completed in about 2001. Some of the workmanship was found to be defective. On 4 February 2005 the plaintiff contracted with the defendant builder to rectify the defects in the work of the original builder.
2. The work to be done by the defendant was identified by reference to a detailed scope of works which followed a report (which in turn followed an investigation) by the plaintiff's expert, Mr Ratcliff. The plaintiff says in these proceedings that the defendant failed to perform some of the work the subject of its contractual scope, and performed other aspects of its contractual scope of works defectively.
3. The defendant has participated in the proceedings until very recently, when its solicitor served notice of ceasing to act. Before that happened, the defendant's expert on the question of defects had conferred with Mr Ratcliff, and they had produced a joint report. That joint report indicated agreement on a number of defects. I have taken account of the joint report not for the purpose of proving the opinion of the defendant's expert (although I think it would have been admissible for that purpose) but, and in fairness to the defendant, for the purpose of proving only Mr Ratcliff's up to date opinion on the defects in question.
4. The Scott Schedule as amended identifies some seven defects or groups of defects. The existence and nature of each of those defects has been proved through Mr Ratcliff's report (supplemented, where necessary, by reference to the joint report).
5. The plaintiff obtained a quotation for rectification of the defendant's defective and incomplete work. The scope of works for that rectification was prepared by Mr Ratcliff. The successful builder was one of a number of builders who submitted tenders. Those tenders were assessed by the plaintiff's expert, Mr Ryan. The plaintiff relies on Mr Ryan's evidence for the purpose of proving the cost of rectification of the defective works summarised in the amended Scott Schedule.
6. In essence, what Mr Ryan has done is taken the relevant amount allowed by the successful tenderer and added in, in effect by way of apportioning, the allowances for overhead, preliminaries and the like.
7. On the basis of Mr Ratcliff's evidence (as I have said, supplemented where necessary by reference to the joint report) I am satisfied as to the defects and incomplete work alleged in the plaintiff's claim against the defendant. On the basis of Mr Ryan's report I am satisfied as to the cost of rectification.
8. The claim includes an allowance for the cost of the home warranty insurance taken out by the successful builder. The plaintiff's case is that had the defendant done its work properly, there would have been no need for that builder to be retained, and thus no need for it to obtain home warranty insurance (the cost of which, of course, it charged to the plaintiff).

9. There is also a relatively small item for matters not covered by Mr Ratcliff's report. That refers to various common area defects, delaminating paintwork and the like. Those defects have been identified in a report by Broadscope Building Consultants and again the cost of rectification has been assessed by Mr Ryan.
10. In relation to those last two items (home warranty insurance and the Broadscope defects) the plaintiff claims margin in accordance with Mr Ryan's evidence. I am satisfied that the allowance is appropriate.
11. The total amount of the claim is, before interest and exclusive of GST, \$585,501.50. The plaintiff claims interest on that amount. It has claimed interest not from the time each invoice was rendered and paid but, rather, from one month after the completion of all work. That method of calculation of interest is inherently fair to the defendant and I think it appropriate to allow interest on that basis. The sum so calculated for interest is \$67,972.34.
12. It follows that I am satisfied that the plaintiff has made good its claim, including interest, in a total amount of \$652,473.84. The plaintiff should have judgment for that amount. There is no reason why costs should not follow the event and I will make that order in due course.
13. I direct the plaintiff to submit a draft minute of orders necessary to give effect to those reasons.
14. I direct that the plaintiff's solicitor attend on my Associate for the purpose of uplifting the court books and other material filed in accordance with the Court's earlier directions.

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Decision last updated: 10 February 2017