

Joint owner-occupiers awarded general damages of \$35,000

In a recent High Court decision, Thomas J awarded joint owner-occupiers of a unit in a leaky complex \$35,000 in general damages for stress and anxiety arising from the discovery of leaky issues with their unit and the resulting litigation. This is an increase above the previous level of general damages for owners of leaky buildings. Amy Davison, Senior Associate, and Zoe Hollander, Law Clerk, discuss.

Previous position

General damages are financial compensation that is issued by a court to compensate for injuries suffered, for which no real dollar value can be calculated. They can be awarded in addition to actual losses to compensate plaintiffs for stress, anxiety, and other non-pecuniary damage they have suffered as a result of a breach of duty they are suing in respect of.

In the leaky building context, the Court of Appeal in *Byron Ave (O'Hagan v Body Corporate 189855 [2010] BCL 299; BC201061030)* per Baragwanath J considered the level of general damages appropriately awarded to owners of units in a leaky building. In that case, general damages were awarded to owners as follows:

1. Single non-resident/investor owners - \$15,000;
2. Joint non-resident/investor owners - \$20,000; and
3. Single owner-occupiers - \$25,000.

In *Byron Ave*, there were no joint owner-occupiers, so the Court of Appeal did not consider what award of general damages would appropriately be made for that category of owners.

Since the decision of the Court of Appeal in *Byron Ave*, Courts have generally taken the level of general damages awarded in that case as a

“tariff” or rule of thumb in assessing the level of general damages to award in leaky building cases. However, the Courts have treated the top award in that case, of \$25,000 to single owner-occupiers, as a ceiling for general damages awards in leaky building cases, including for joint owner-occupiers.

Updated position

In *Body Corporate 346799 v KNZ International Co Ltd [2017] NZHC 511*, Thomas J considered the reasoning of the Court of Appeal in *Byron Ave* in relation to the award of general damages and highlighted the lack of joint owner-occupiers in that judgment. Following the logic behind an increased award of general damages for joint non-occupiers as set out in *Byron Ave* (not quite double the general damages awarded for a single non-occupier, as the couple could share the burden somewhat), Thomas J awarded joint owner-occupiers general damages of \$35,000 – again, an increase on the general damages award for single owner-occupiers, but not double as the joint owners can ‘share the burden’ somewhat.

Thomas J carefully considered the evidence presented to ensure an award of general damages for the owners in that case was justified (she held that it was) and saw the necessary assessment as holistic and related to the personal circumstances of the plaintiff, rather than a tariff-style analysis with adjustments for inflation.

Comments

Thomas J’s award of an increased general damages amount for joint owner-occupiers follows the logic in Baragwanath J’s *Byron Ave* judgment and looks therefore to open the door for

a new ceiling for general damages awards in leaky buildings cases.

The objective of awards of general damages is to compensate for non-quantifiable damages. Evidence as to the stress and anxiety and other effects of the breach of duty remain a key part of qualifying for an award of general damages. Thomas J’s judgment recognised that inflation since *Byron Ave* could lead to increased general damages amounts but that a holistic assessment that considers the personal circumstances of the plaintiff was more appropriate.