

Legal Update

Body Corporate 90247 & Ors (being the owners of 14C Glenmore Street) v Wellington City Council [2014] NZHC 962 (per Ronald Young J) - Costs

Costs were reserved in the 27 February 2014 leaky building judgment *Body Corporate 90247 v Wellington City Council*, in which Ronald Young J awarded our homeowner clients approximately \$1.9 million against the Wellington City Council due to the Council's negligence in undertaking inspections and issuing code compliance certificates.

The parties were unable to agree costs. The Council contended that the matter was a 2B proceeding (a standard proceeding of average complexity, requiring an average amount of time to complete standard steps to hearing), which in this case amounted to \$115,605 of legal costs. We argued that the costs award should be significantly higher, submitting that the proceeding should be recategorised and an uplift on time and scale should be awarded.

The costs judgment was released on 9 May 2014 and represents a great result for our clients. The High Court accepted our submission that there were 'special reasons' that, in this case, justified recategorisation from category 2 (proceeding of average complexity requiring counsel of skill and experience in the High Court).

The special reasons supporting recategorisation included the complexity and breadth of legal and factual issues that was not apparent at an early stage, the fact that the proceeding required counsel of special skill and experience, and the extent of evidence and legal submissions required and presented.

Additionally, the High Court allowed an increase to the time allowed in the High Court scale for certain steps, including an increase above band C for certain steps, as well as a 25% uplift on the scale costs from August 2012 for the Council's failure to accept a reasonable settlement offer made at that time. All of the expert costs and

disbursements sought were also awarded.

The costs judgment sends a good message that regard will be had on the issue of costs to the rejection of reasonable settlement offers. In this judgment, a significant uplift (25%) was awarded for the Council's unreasonable failure to accept a settlement offer in August 2012 in circumstances where our clients' end result at trial was significantly better than the settlement offer made.

It also underlines the legal and factual complexity of these types of multi-unit leaky building cases, which generally require experienced counsel.