

## **OWNER BUILDER - warranties**

### **McIntosh v Lennon [2024] NSWSC 169**

**29 February 2024 - Payne JA**

**In sum: The Supreme Court read words into specific provisions of the HBA to align with the consumer protection purpose of the legislation. The Supreme Court held that the definition of “owner-builder” not including a circumstance where an owner who was in effect an owner-builder failed to obtain a permit is clearly the product of legislature oversight. It would otherwise be a perverse outcome where purchasers from owner-builders who had complied with the statutory obligation to obtain a permit would have the benefit of the statutory warranties but purchasers who bought property from owners who had unlawfully carried out residential building work would not.**

**Facts: The plaintiff (McIntosh) obtained development consent to perform residential building work on a property, representing to the consent authority that a licensed builder would carry out the work as required by s 12 of the HBA. Under s 12(a) of the HBA, Mr McIntosh was required to obtain an owner-builder permit before commencing work. In fact, the plaintiff never obtained such a permit and carried out the work himself. He then sold the property in 2016, and in 2020 it was sold again to the defendants, Mr and Mrs Lennon. In 2021, the defendants commenced proceedings in NCAT seeking an award of damages for breach of the statutory warranties contained in the HBA. The statutory warranties relate to warranties given to subsequent purchasers of a property concerning the quality of the building work. The Tribunal at first instance awarded damages to the defendants for breaches of those warranties in the amount of \$95,199.15. Mr McIntosh appealed this finding to the Appeal Panel on the basis that such**

**warranties could not be enforced against him since he was not “owner-builder” under the HBA as he had not been granted the requisite owner-builder permit. The Appeal Panel upheld the findings of the Tribunal at first instance. The plaintiff then appealed to the Supreme Court, the substantive issue again being the meaning of “owner-builder” for the purposes of statutory warranties.**