

**IN THE WEATHERTIGHT HOMES TRIBUNAL
TRI 2011-100-000015**

BETWEEN **BODY CORPORATE 180379 AND
UNIT OWNERS OF FOX TERRACE
APARTMENTS**
Claimant

AND **AUCKLAND COUNCIL AND
OTHERS**
Respondents

PROCEDURAL ORDER 6
(Determination in respect of Unit F)
Dated 20 July 2011

1. The Council has applied for a determination that the claims in respect of Unit B and Unit F are statute barred pursuant to section 393 of the Building Act 2004. This order relates only to Unit F. It is appropriate to deal with the applications in respect of Unit B and Unit F separately because they raise different legal issues.
2. There are 13 units in the complex. On various dates between 7 September 2005 and 7 September 2006, the owners of 12 of the units filed claims under the Weathertight Resolution Services Act 2002 ("the 2002 Act").
3. Section 55 of the 2002 Act deemed the filing of these claims to be the filing of proceedings in court for the purposes of the Limitation Act 1950 and other provisions that impose a limitation period.
4. Unlike the other 12 unit owners, the owners of Unit F (the Wongs) did not file a claim in respect of their unit under the 2002 Act.
5. On 12 August 1997 the Code of Compliance Certificate for the construction of the complex was issued by the Council. Accordingly, pursuant to section 393(2) of the Building Act 2004, the cut off date for limitation considerations in respect of claims against the Council was 12 August 2007.
6. The 2002 Act did not provide for representative claims in respect of multi-unit complexes.
7. Following the passing of the Weathertight Resolution Services Act 2006 ("the 2006 Act") the existing unit claims were withdrawn pursuant to section 141(4) of the transitional provisions of the 2006 Act and were re-filed as a multi-unit

claim pursuant to section 19 of the Act on 23 August 2007. This claim included Unit F.

8. Section 19 provides that representatives of some or all of the owners of dwellinghouses in a multi-unit complex may bring a claim in respect of those dwellinghouses, 'as if those dwellinghouses and areas were a single dwellinghouse, and as if the representative were its owner'.
9. The claimants have argued that the claim against the Council in respect of Unit F is not statute barred. They say that the multi unit claim which incorporated the 12 existing claims is effectively one claim filed on one date, and not a series of different claims being dealt with together. Unit F forms part of this one claim and therefore cannot be separately statute barred.
10. It is the view of the Tribunal that the provision in the 2006 Act allowing representative claims in respect of multi-unit complexes to be brought is essentially administrative in nature. It allows claims by separate owners of dwelling houses in multi-unit complexes to have their claims treated as a single claim in order to avoid the duplication of resources which would be involved in determining each unit claim separately. During adjudication individual consideration is given to each dwelling house in a multi-unit claim and the owner of each must still establish their loss and defend any affirmative defences made in respect of their specific unit.
11. The Council has argued that the claim against them in respect of Unit F is limitation barred because no claim in respect of it was filed prior to the expiry of ten years from the date of issue of the Code of Compliance Certificate. The Tribunal finds that this affirmative defence is made out and determines that the

claim in respect of Unit F against the Council is statute barred.
The owners of Unit F can not avail themselves of the
protection provided by s 141(4) as they did not have a claim
filed under the 2002 Act.

DATED this

M Roche

Tribunal Member