
Tadd Management Limited v Weine

In *Tadd Management Limited v Weine* the High Court considered the liability of a vendor to a purchaser where a New Building Standard (NBS) rating used in marketing materials turned out to differ substantially from a later assessment.

The property in question was a commercial building owned by the Ruth Weine Family Trust (**Vendor**). The marketing materials for the property included an ISA and accompanying letter from New Zealand Consulting Engineers Limited (**NZCEL**) which assessed the building as having a 60% NBS Rating.

Following purchase at auction, Tadd Management Limited (**TADD**) had two independent companies provide a second opinion on the NBS rating. Both returned results significantly lower than 60% NBS rating and indicated that the building met the definition of an earthquake prone building under the Building (Earthquake-prone Buildings) Amendment Act 2016. TADD claimed there had been a contractual misrepresentation by the Vendor.

The Court found in favour of TADD. The ISA was found to have been presented by the Vendor as a statement of fact not as a statement of opinion. The Court highlighted the Vendor's failure to provide context for the ISA or explain the limited nature of an ISA in marketing the property. Statements from the Vendor and NZCEL that the NBS of 60% was a 'good rating' and that 'further analysis or a DSA would probably return an NBS exceeding 70%' also contributed to the Court's finding. Any disclaimer the Vendor had provided in relation to the ISA failed to address the specific property at hand and, therefore, did not limit their liability for misrepresentation.

The Court also considered the Vendor's claim against NZCEL for negligence, breach of contract, or breach of the Fair Trading Act 1986. The Court found that, while the NBS rating was later found to be incorrect, NZCEL had prepared the ISA with reasonable skill, care and diligence, and in doing so absolved itself of any liability.

Key Takeaway point: Vendors should take care in the representations they make about a property to prospective purchasers. If providing third party reports with marketing material a vendor should make sure to emphasise to the purchaser that any report is for information purposes only and set out the limitations that may apply to any such report. Appropriate limitations should also be included in the Agreement for Sale and Purchase.