



## Civil and Administrative Tribunal New South Wales

Case Name: **LUXURY BUILDING GROUP PL v/ats COTTEE and MARTIN [No 2]**

Medium Neutral Citation: [2023] NSWCATCD

Hearing Date(s): On the papers

Date of Orders: 27 November 2023

Date of Decision: 27 November 2023

Jurisdiction: Consumer and Commercial Division

Before: G K Burton SC, Senior Member

Decision: 1. Order that Luxury Building Group PL pay Paul Robert Cottee and Danielle Louise Martin's costs of proceedings HB 22/02210 and HB 22/22966 on the ordinary basis as agreed or assessed.

Catchwords: REAL PROPERTY – HOME BUILDING – defective and incomplete works – money order – validity of termination – repudiation and acceptance – were liquidated damages a penalty – quantum meruit for incomplete progress payment stages and informal variations – costs follow the event

Legislation Cited: As cited in substantive decision

Cases Cited: As cited in substantive decision

Category: Costs

Parties: Luxury Building Group PL (applicant in HB 22/02210, respondent in HB 22/22966)  
Paul Robert Cottee and Danielle Louise Martin (respondents in HB 22/02210, applicant in HB 22/22966)

Representation: Counsel:  
Mr M Birch, solicitor (Cottee and Martin)  
No costs submissions (Luxury Building Group PL)  
Solicitors

Birch Partners (Cottee and Martin)

File Number(s): 2022/00450063 (Previously HB 22/02210) and  
2022/00433412 (Previously HB 22/22966)

Publication Restriction: Nil

## REASONS FOR DECISION

- 1 In my substantive decision delivered 27 September 2023 I decided that the owners were entitled to a money order against the builder for \$500,000 being the Tribunal jurisdictional limit.
- 2 At the conclusion of the final hearing when I reserved my decision, I noted that neither party wished to seek a hearing on costs and that both parties wished to defer questions of costs until after delivery of the substantive decision. I accordingly ordered that a hearing on costs (to the extent that s 50 of the *Civil and Administrative Tribunal Act 2013* (NSW) (NCAT Act) applies when there has been a substantive hearing) is dispensed with and that any costs application would be dealt with on the papers and ordered a timetable for any further documents and submissions on questions of costs. I set out some principles governing costs at the end of my substantive reasons, which I do not repeat here.
- 3 The owners filed written submissions seeking their costs of the proceedings on the ordinary basis as agreed or assessed. The builder filed no submissions on costs.
- 4 The owners agreed with the principles governing costs set out in my substantive reasons and said that such principles supported the costs order that they sought since they were substantially successful in both proceedings and the builder was unsuccessful.

5 I respectfully agree with that submission and shall make a costs order as sought by the owners.

**Orders**

6 I make the following order:

- (1) Order that Luxury Building Group PL pay Paul Robert Cottee and Danielle Louise Martin's costs of proceedings HB 22/02210 and HB 22/22966 on the ordinary basis as agreed or assessed.

\*\*\*\*\*

I hereby certify that this is a true and accurate record of the reasons for decision of the New South Wales Civil and Administrative Tribunal.

Registrar

