

# TCRC *Property Update*

## Supreme Court Decision – Landlord held liable for Contractor's actions

### 'Watertight' covenants a risk for landlords

**In brief:** A recent decision of the Supreme Court of Victoria has found a landlord liable for loss suffered by a tenant as a result of the use of a high-pressure hose by a contractor engaged by the landlord. Allens Arthur Robinson's Special Counsel Christine Adamson and Lawyer Jaelle Berkovits provide a summary of this decision.

#### The decision

A tenant leased a factory in Melbourne for its textile printing business. The tenant's lease contained a covenant providing that the landlord must ensure that 'the roof over the demised premises is kept watertight at all times and will maintain the roof structure in a satisfactory condition'. Part of the roof of the factory was made of asbestos.

The tenant made a number of complaints to the landlord about the leaking roof during the term of the lease. Shortly before the end of the lease, the landlord engaged a contractor to repair the roof. The contractor submitted a detailed quotation to the landlord, which listed the use of a high-pressure hose to clean the roof cover as part of the works to be done. The landlord accepted the quotation provided by the contractor.

The use of the high-pressure hose on the asbestos roof caused large amounts of water and debris to leak into the premises. As a result, the tenant's property in the premises was damaged and the factory was closed for a number of months. The use of the high-pressure hose was also in breach of the Asbestos Regulations.

The court awarded damages against the landlord on the basis that the landlord had an absolute obligation in the lease to keep the roof in a watertight condition and that the landlord breached both this obligation and the covenant of quiet enjoyment in the lease. Even though the tenant's loss was not caused by a direct act of the landlord, the court held that, by accepting the contractor's quotation, the landlord had authorised the contractor's use of the high-pressure hose. On this basis, the court also found the landlord liable for the contractor's negligence.

*The above article is courtesy of Allens Arthur Robinson.*

Allens Arthur Robinson   
Clear Thinking



The difficulty people are having affording a home loan is largely of our own making. We've made a rod for our own backs. Governments haven't done all that much to contribute to the problem and will do little to alleviate it.

The true problem is that our homes are at the centre of our materialist ambitions. As our incomes grow in real terms over time we want to put much of the increase into our homes.

When a change in social attitudes meant girls started getting better educations and staying on in the workforce after marriage and childbirth, the first two-income families had a great advantage: they could afford to buy a better house than other families.

But as two-income families became the norm, that advantage was lost.

*The above is an excerpt from the article "Housing Crisis – we did it to ourselves" by Ross Gittins, Sydney Morning Herald.*

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