

IN THE WEATHERTIGHT HOMES TRIBUNAL

**TRI-2010-100-000098
[2012] NZWHT AUCKLAND 3**

BETWEEN ERIC MIN SEN and BENITA SEN
Claimants

AND AARON PAUL BARRON
First Respondent
(Removed)

AND GILLIAN ANNE BARRON
Second Respondent
(Removed)

AND SAXON DESIGN
Third Respondent
(Removed)

AND D D DAVIDSON CONSULTANTS
Fourth Respondent
(Removed)

AND AUCKLAND COUNCIL
Fifth Respondent
(Removed)

AND PETER DAVIES
Sixth Respondent
(Removed)

**AND CHAMBERS CONSULTANTS
LIMITED**
Seventh Respondent
(Removed)

AND ADRIAN ROSS KIFF
Eighth Respondent

AND MARY ROWENA GINN
Ninth Respondent
(Removed)

**AND CORNERSTONE INTERNATIONAL
LIMITED**
Tenth Respondent
(Removed)

- AND** **ANDREW PICKMERE**
Eleventh Respondent
(Removed)
- AND** **FOUNDATION HOMES LIMITED**
Twelfth Respondent
(Removed)
- AND** **WAYNE BALLARD**
Thirteenth Respondent
- AND** **BAYSWATER BUILDERS LIMITED**
Fourteenth Respondent
(Removed)
- AND** **SURE PLUMBING LIMITED**
(formerly REDPATH PLUMBING LIMITED)
Fifteenth Respondent
- AND** **ANTHONY JOHN WONG KAM**
Sixteenth Respondent

Hearing: 15 November 2011

Appearances: Eric Min Sen and Benita Sen, claimants,
Andrew Redpath, director of Sure Plumbing Limited, fifteenth
respondent, and
Anthony John Wong Kam, sixteenth respondent.

Decision: 2 February 2012

FINAL DETERMINATION
Adjudicator: R M Carter

CONTENTS

BACKGROUND	4
Matters the Tribunal must decide	4
Mr and Mrs Sen’s application to join Mr Redpath.....	5
The amount claimed	5
ARE THERE DEFECTS CAUSING LEAKS AND DAMAGE OR LIKELY FUTURE DAMAGE?	6
THE CLAIM AGAINST WAYNE BALLARD.....	9
THE CLAIM AGAINST ADRIAN ROSS KIFF.....	12
THE CLAIM AGAINST SURE PLUMBING LIMITED	14
THE CLAIM AGAINST ANTHONY JOHN WONG KAM.....	16
DAMAGES	17
CONCLUSION AND ORDERS	20

BACKGROUND

[1] The claimants Mr and Mrs Sen came to live in New Zealand in 2003. After renting accommodation, they purchased a house at 1 Deverell Place, North Cross, in September 2004. About a year after the purchase they noted signs of dampness. In 2009 they applied to the Department of Building and Housing for an assessor's report.

[2] Mr John Dalton, the assessor, completed his report in July 2009. He found that their house met the criteria of a leaky home under the Weathertight Homes Resolution Services Act 2006. Mr and Mrs Sen then lodged a claim with the Tribunal.

[3] In September 2011 Mr and Mrs Sen took part in a mediation where they reached a partial settlement with the respondents who took part. Mr and Mrs Sen then pursued the balance of their claim against the four remaining parties. They are the eighth respondent Mr Kiff, plasterer; the thirteenth respondent Mr Ballard, labour only carpenter; the fifteenth respondent Sure Plumbing Limited, represented by Mr Redpath, director; and the sixteenth respondent Mr Wong Kam, concrete layer. The parties who settled were removed.

Matters the Tribunal must decide

[4] The Tribunal has to determine whether there are defects in the construction of Mr and Mrs Sen's house which have caused leaks and damage to it, or are likely to do so in the future; and whether any of the four remaining respondents owe a duty of care to Mr and Mrs Sen which they breached by causing or contributing to any such defects. If they did, the Tribunal must decide what damages are payable.

Mr and Mrs Sen's application to join Mr Redpath

[5] The day before the hearing, Mr Redpath advised Mrs Sen that his company, Sure Plumbing Limited, the fifteenth respondent, was insolvent. Mr and Mrs Sen indicated that, despite that advice, they wanted a determination against Sure Plumbing Limited. Mrs Sen stated that the claimants considered Mr Redpath was also liable as a director of the company and applied to have Mr Redpath personally joined to the proceedings.

[6] Mrs Sen stated that Sure Plumbing Limited would not be able to fulfil any judgment against it. She submitted that, as a director of the company, Mr Redpath assumed responsibility and that the evidence against him was the same as the evidence against the company. Mr Redpath responded that if he was going to be joined, it should have happened a few months ago. Mrs Sen emphasised that the email he sent to her stated that the company would not be able to meet any judgment.

[7] I decided that Mr Redpath should not be joined for three reasons. First, Sure Plumbing Limited's insolvency did not affect the Tribunal's ability to make a determination against it. Secondly, if Mr Redpath was joined, he would need to be given the opportunity to take advice and appoint a legal representative if he wished, and I would have to adjourn the hearing for him to have time to do so. I stated that I wished to avoid such a delay in the proceedings. Thirdly, there had been an opportunity to apply to join Mr Redpath when Mr and Mrs Sen were legally represented, but no application was lodged then. The adjudication hearing therefore went ahead. Mr Kiff and Mr Ballard did not take part in the hearing.

The amount claimed

[8] Amounts for legal fees and experts fees which were associated with the adjudication process, rather than remediation,

are not able to be claimed and claims for those amounts were withdrawn. The claim is for the following:

Reliant quote for repairs	\$253,675.00
Rental for three months - estimate	\$6,600.00
Removal expenses - estimate	\$598.00
Storage fees - estimate	\$904.50
Contents insurance	\$649.92
General damages for three persons at \$20,000.00 per person	\$60,000.00
Total amount of the claim	\$322,427.42
Less the amount of the settlement	\$189,000.00
Balance sought from the remaining respondents	\$133,427.42

ARE THERE DEFECTS CAUSING LEAKS AND DAMAGE OR LIKELY FUTURE DAMAGE?

[9] The house was constructed with a concrete slab base and concrete first floor, with EIFS cladding (the Cornerstone Expanded Polystyrene EPS system) to the ground floor and Harditex cladding to the first floor.

[10] In his report, the assessor Mr Dalton stated that the house was leaking at six locations on the north elevation, six locations on the east elevation, five locations on the south elevation (the front of the house with the main entrance, garage entrance and a long balcony) and one location on the west elevation. Defects were identified in both the Harditex and EPS parts of the cladding, as well as the balcony.

[11] The principal defects causing damage in the Harditex were:

- instances of cracking at the sheet joints and elsewhere in the main body of sheets;

- face fixed windows only had texture coating to the edge of the jambs to achieve weathertightness, lacked the recommended inseal strip seal or silicone sealant behind the frames, and did not have the recommended sill flashing or flashing up-stands at the jambs;
- no recommended vertical control joints.

[12] The EPS cladding defects were:

- there was no bevel (slope) to the base wall window heads and sills;
- a flashing under the EPS base wall panel was facilitating water entry;
- there was no bottom plate on the inside face of the EPS base wall, or under the jamb stud;
- there was no damp-proof course between timber and concrete components;
- there was a crude horizontal saw cut in the concrete foundation wall below the EPS base walls;
- there was insufficient clearance between the ground levels and the concrete floor slab generally;
- there was an unsealed PVC angle at a junction of the sill and jamb flashings on the base walls; and
- there was no sealant at the sill and jamb flashing junctions.

[13] The balcony: overflows from the drain had been crudely cut at each end of the balcony, allowing water to freely enter cracking in the mid-level polystyrene band (between the two kinds of cladding).

[14] In summary, there was damage from failed cladding at the first floor level, from defects in the installation of the EPS system used for the base wall, and cracking to it, and insufficient clearances.

[15] Mr Dalton recorded that damage was likely in future because there was or were:

- texture coating in direct contact with the top of window head flashings so there was no anti-capillary gap;
- instances of insufficient overhang of the Harditex cladding below floor level at the balcony, and instances where there was no recommended overhang of the timber bottom plate at the balcony;
- Harditex sheets with no recommended texture coating on the underside;
- incorrect clearances from the balcony decking;
- exposed reinforcing steel in the mid-stage of corrosion on the balcony leading to structural unsoundness and cracks in the concrete which was allowing water ingress;
- a drain outlet bored through the balcony slab which would allow water to further damage the polystyrene bands;
- Harditex fixed hard onto a profiled metal flashing with no expansion gap, and sheets nailed through the profiled metal flashing;
- instances of the texture coating pouting as a result of there being little or no gap between the Harditex sheets;
- face fixed rainwater downpipes, heat pump piping and conduits, and lighting and cable conduits; and
- inadequately sleeved or sealed pipe penetrations through the cladding.
- The transition of the ground floor EPS base wall and first floor Harditex cladding did not follow the correct principles which require a 6mm expansion gap and the sheets to 'float' and to be fixed independently to the bottom plate, not through the flashing.

THE CLAIM AGAINST WAYNE BALLARD

[16] The plans provided for EIFS cladding. While this was applied to the ground floor, the first floor was clad in Harditex. In his report Mr Dalton stated that he could find no documentation in the territorial authority file which authorised the change in cladding type for the first floor. In a document Mrs Barron filed, she stated that because Mr Ballard was very familiar with working with Harditex, they decided to apply Harditex to the first floor. It was the cladding in the building specifications, which was different from the cladding on the plans. They made the change after checking with the Council that this was appropriate.

[17] The claim against Mr Ballard stated that as a builder involved in the construction of the property, Mr Ballard had a duty to carry out his work with due skill and care. The claimants alleged he failed to do so as there were defects in the way he installed window flashings and expansion joints as part of the Harditex application.

[18] In a written response to the claim, Mr Ballard acknowledged that he was a labour only carpenter for the project, which was being managed by Mrs Barron and her partner. Mr Ballard stated he left the project before the Harditex cladding was completed because he could not work with Mrs Barron's partner.

[19] Mr Ballard wrote that all the works he carried out were approved by the local authority and due care was taken with this work. Mr Ballard wrote that the assessor had applied a risk matrix that was not introduced until 2004 and therefore did not apply to this dwelling.

[20] Mr Ballard doubted the integrity of the assessor's report. He stated that the James Hardie manual attached to it only recommends the use of sill flashings and they are not a critical part of the system as claimed. He wrote that vertical control joints were installed as per

the manufacturer's instructions and unfortunately the plasterer just plastered over them.

[21] Mr Ballard also wrote that the moisture level within the house was very high with water running down the inside of the exterior walls and window glass. The windows were not left open wide enough to allow air to flow through the house and dry it out. He believed the high moisture reading was being caused by the house being poorly ventilated.

[22] At the hearing Mr Sen said that he and Mrs Sen were away at work all day but that they kept the windows open in the ordinary way when they were at home. They denied that the house was poorly ventilated. But there is no evidence that airing a property resolves leaky home problems. I am satisfied that this is not a cause of the need for remedial work.

[23] Mr Dalton stated that he noticed that there were no vertical control joints in the Harditex cladding at the first floor level. They were required every four metres. After the period of time this building had been built, he would have expected to see cracking at the control joint which would have been telegraphed through the plaster and that was not present. He therefore very much doubted that vertical control joints were ever put in place in the first place.

[24] The expert engaged by the claimants, Mr John Bukowski, who is an architect, agreed. He said that he too believed that the builder had not left gaps but had probably butted the sheets together hoping that there was some elasticity in the material. Cracks had developed in the plaster all the way along allowing water entry. Mr Dalton also pointed to diagonal cracking around the wall openings which indicated a weak point, outside of a deliberately created weak point. Mr Dalton stated there must be a detailed join in the sheets, with a gap that is sealed properly, and left as something that can be re-sealed in future.

[25] Mr Dalton also said that there was an absence of jamb flashings on the windows of the first floor. He said that there is not a requirement for such flashings when aluminium windows are fixed in Harditex, but there needed to be in-seal strip seals behind the jambs themselves that prevent water entry.

[26] It is well established in law that contractors, including labour only carpentry contractors,¹ owe a duty of care, including to subsequent purchasers, for the work they undertake.

[27] Further, sections 74 and 75 of the WHRS Act 2006 provide that the Tribunal is entitled to draw any reasonable inferences it thinks fit from Mr Ballard's lack of participation in the process overall and non-attendance at the hearing. The Tribunal is also entitled to determine the claim on the basis of the information before it.

[28] The experts' opinion was that the builder was responsible for defects in the installation of the Harditex, and that the plasterer was at fault because the texture coating was in direct contact with the top of the window head flashings and because of other plastering defects.

[29] I observe that the risk matrix, which Mr Ballard referred to as having come into effect after the house was built, is used by the assessor to identify aspects of the dwelling that are more likely to suffer weathertightness failure or indicate why failure occurs. The matrix is not a defect.

[30] In his written response, Mr Ballard did not comment on all the criticisms of the application of the Harditex that Mr Dalton made. In particular Mr Dalton was concerned that, in the absence of apron flashings, which he acknowledged were not a requirement, in-seal strips needed to be installed beneath the edges of the windows and

¹ *Boyd v McGregor* HC Auckland, CIV 2009-404-5332, 17 February 2010.

they appeared not to have been. It was this aspect rather than sill flashings that he was concerned about at the hearing.

[31] Mr Bukowski said he agreed with the defects Mr Dalton had identified and he largely agreed with Mr Dalton's evidence at the hearing. No other expert evidence disputed any of these conclusions. In particular I accept Mr Dalton's and Mr Bukowski's evidence that vertical control joints were absent or at best poorly formed. Mr Ballard did not attend the hearing to explain how he joined the sheets. Mr Dalton's and Mr Bukowski's evidence was objective, credible and carefully considered. Mr Dalton and Mr Bukowski considered that the defects in connection with the application of Harditex were the builder's responsibility and that they led to damage and loss.

[32] For those reasons I find Mr Ballard was in breach of his duty of care to the claimants Mr and Mrs Sen and their claim against him is proven.

THE CLAIM AGAINST ADRIAN ROSS KIFF

[33] The claim against Mr Kiff, the eighth respondent, stated that he applied the external plastered membrane. Referring to the assessor's report, the claim alleged that texture coating was in direct contact with the top of window flashings, that face fixed windows appeared to have only texture coating to the edge of the jambs with no in-seal strips, and that there were instances where there was no recommended texture coating to the underside of Harditex sheets.

[34] Mr Kiff did not participate in the proceedings in any way. He did not file a written response or attend the hearing. Mr Kiff's failure to respond and attend the hearing are likewise matters that I draw an inference from. I am able to decide the issue of whether Mr Kiff is liable on the evidence available.

[35] The question arises whether Mr Kiff was personally responsible for the plastering work. A quote for the application of the membrane texture on the Harditex and for plastering and texturing the EFS cladding was on the letterhead of Futureproof Industries Limited and signed by 'Adrian Kiff Futureproof Industries'. Mrs Barron said that she never saw Mr Kiff carrying out plastering work. She only saw him delivering materials to the site. She said that in the end only one foreign language-speaking plasterer was working doing the plastering. However Mrs Barron said she discussed with Mr Kiff a producer statement he signed. Mrs Barron said that Mr Kiff clearly led her to understand that he took personal responsibility for the quality of the plastering work.

[36] Mr Kiff was one of two directors of Future Proof Industries Limited and owned half the company. It has now been struck off. Even though Mr Kiff's company contracted to do that work, and even though he arranged for employees or subcontractors to carry it out, Mr Kiff can still be found to be personally liable if he was in control of the work.²

[37] Mr Dalton also emphasised that head flashings had been installed as required at the windows but the anti-capillary drainage gap under the flashing at the top of the windows had been covered over with plaster, preventing water from escaping externally. Mr Bukowski's view was that the lack of a capillary gap because the plaster was close to the head of the windows was a significant problem. The experts were also critical of the fact that on the ground floor the plaster had been extended too far down.

[38] I conclude from Mrs Barron's evidence that Mr Kiff did personally control the work and for that reason owed a duty of care to the purchasers for the work. I conclude from the experts' evidence that he breached that duty because the plastering work was defective

² *Hartley v Ballemi* HC Auckland, CIV 2006-404-2589, 29 March 2007.

in the ways described and caused or contributed to leaks and damage, or is likely to do so.

THE CLAIM AGAINST SURE PLUMBING LIMITED

[39] The claim against Sure Plumbing Limited relates to pipe penetrations and the face fixing of external pipes.

[40] Mr Redpath, the director of Sure Plumbing Limited, filed an application for removal which the Tribunal treated as a response to the claim. Mr Redpath stated that Redpath Plumbing Limited (as Sure Plumbing Limited was then called) was not involved with work carried out on the decks and balcony where there were defects. Redpath Plumbing was contracted to carry out the plumbing work to the interior of the home.

[41] The only work carried out on the exterior of the building by Redpath Plumbing was face fixed downpipes which were requested near the end of the building project. Mr Redpath wrote that there is only one way to fix downpipes to any exterior cladding as required by local by-laws and that is to screw them with the manufacturer's brackets with a bead of silicone under the clip. Because the brackets can only be secured after the cladding has been completed, Redpath Plumbing requested from the plasterer the appropriate silicone be used so as not to void any warranty issues with the exterior finish. This was the practice on all the residential housing work carried out by Redpath Plumbing at that time.

[42] Mr Redpath also addressed the assertion that pipe penetrations through the cladding had no sleeved joint or formed sealant joint. Mr Redpath wrote it was Redpath Plumbing's standard practice to install and clip to the interior timberwork all pipes that were going to penetrate the cladding before any exterior wrapping of the building with building paper or exterior cladding work had begun.

[43] Redpath Plumbing believed it was the responsibility of the plasterer to sleeve and seal the pipe penetrations through the cladding. Redpath Plumbing had in no way been negligent or contributed to the ingress of water. Mr Redpath stated there is no factual evidence that would support Redpath Plumbing's inclusion in the case.

[44] At the hearing Mr Bukowski stated that as a general rule when there are pipes penetrating the external cladding the plumber always seals off and leaves his work waterproof unless a specific sealant trade comes in to do it. It could be a soft sealant, not necessarily a sleeve. For downpipes, if there is no blocking behind the plumber should block and seal externally.

[45] Mr Redpath said that it would have been left to the plasterer to seal pipe penetrations on the outside of the building. There was some support for this view from Mr Dalton. As regards the downpipes, Mr Redpath said that Redpath Plumbing would have located the blocks behind the wall. Mr Dalton said these should be installed by the builder. Mr Redpath said they would not fix a block on the outside of the house. That would cause even more problems with the Harditex if there was nothing behind it. It was their practice at the time to seal any screws that went through the cladding. Mr Bukowski said it seemed that Redpath Plumbing missed a few, but Mr Redpath replied that after nine years it was hard to say. Mr Bukowski stated however that the contribution of the plumbing defects was minor in relation to the damage as a whole.

[46] I find that the explanations Mr Redpath provided in his application for removal and at the hearing were reasonable. It is reasonable for a plumber to assume that a cladder or plasterer will see that pipes penetrating the cladding are properly sealed, and I accept that sealant was probably used with the brackets or clips holding downpipes. In any event I accept that the amount of damage or future likely damage caused was minimal in relation to the likely

repair costs as a whole. For those reasons the claim against Sure Plumbing Limited does not succeed.

THE CLAIM AGAINST ANTHONY JOHN WONG KAM

[47] The original claim against Mr Wong Kam was that the ground clearances were insufficient. It was further alleged that he did not provide a sufficient fall in the drive way at the garage entrance, and that he had not provided a step down at the balcony. It was also alleged that he was responsible for cracks in the concrete allowing water ingress, in particular a crack running from the balcony into the lounge on the first floor.

[48] Mr Wong Kam filed extensive written evidence and diagrams in response. From that evidence and the evidence at the hearing, it is clear that Mr Wong Kam laid the concrete foundation slab but did not provide the concrete for the foundation or construct the boxing for it. I accept that he was not responsible for the inadequate foundation to ground clearance. I also accept Mr Wong Kam's evidence that he was not responsible for the inadequate cladding to concrete clearance at the garage entrance.

[49] Mr Wong Kam also responded to Mr Bukowski's allegation that Mr Wong Kam laid the driveway at or near to the ground floor slab level allowing water to enter the interior of the building. Mr Wong Kam said that the owners required a slope rather than a step down. Mr Wong Kam stated that the slope of the concrete inside the garage door and the level of the drive from the garage door were each in excess of the requirements at the time. I accept this evidence also. (There is also a lot of extra concrete around the entrance way and near the garage which, it is clear from photographs and Mr Wong Kam's evidence, he did not lay).

[50] There was lengthy evidence at the hearing about the lack of a step-down or threshold onto the balcony just outside the sliding lounge doors. Mr Wong Kam stated that when he came to pour the

concrete for the first floor, he was not told that there was to be a balcony. To meet a council requirement for an outdoor living area on the first floor, the balcony was formed by shifting the outer wall of the lounge back. Saxon Design and D D Davidson Consulting Structural Engineers were instructed to re-design the slab over the garage entry as a cantilever slab, but Mr Wong Kam was not told.

[51] By the end of the hearing, after the evidence against Mr Wong Kam had been presented and he had addressed the issues that were raised in respect of the balcony, it became clear that Mr Wong Kam was not provided with any plan, original or amended, showing the balcony and step-down. It was also clear that the boxing and framing that had been built before the pour did not provide for a step down. Mr Wong Kam poured the concrete flat, as required. He did not cut the drainage channel or drill the drainage hole into the slab.

[52] Earlier in the proceedings before the hearing, in response to an application for removal Mr Wong Kam had lodged, Mr and Mrs Sen's solicitors had stated that no allegations were being made against him in respect of cracks. For that reason I held that it would be unfair for such allegations to be pursued at the hearing, and they did not proceed.

[53] For all those reasons I held at the end of the hearing that the claims of substandard work against Mr Wong Kam had not been made out. Accordingly the claims against him do not succeed.

DAMAGES

[54] The quote for repairs provided by Reliant, \$253,675.00, and the associated and consequential costs claimed are set out in paragraph 8 of this determination. These total \$262,427.42. There has been no challenge to these amounts, and I accept them as reasonable. I do so even though the estimate for repairs is higher

than the estimate for repairs in the assessor's report of \$207,506.25. The assessor's report was dated 24 July 2009 but the Reliant quote is more recent, dated 11 February 2011.

[55] In addition Mr and Mrs Sen have claimed \$20,000.00 general damages each for themselves and their daughter, a total of \$60,000.00. The Court of Appeal has stated that \$25,000.00 per dwelling is to be taken as a guide for awards of general damages in leaky homes cases.³ I accept Mr and Mrs Sen's evidence that they and their daughter have suffered mentally and physically from their experiences and the effects of the dampness. This is not an exceptional case however and having regard to the Court of Appeal guideline, I consider an award of \$25,000.00 general damages, to the claimants, to be fair and appropriate. This reduces the total acceptable claim by \$35,000.00, so that the claim is now as follows:

Estimated repair and associated costs	\$262,427.42
General damages	\$25,000.00
Total	<u>\$287,427.42</u>
Less settlement	\$189,000.00
Balance	<u>\$98,427.42</u>

[56] In his report Mr Dalton stated that to stop current leaks, the entire house requires remediation of the damaged cladding and building components. He also stated that remedial works are interrelated between current and future leaks. Work will be required to stop current leaking, and to prevent future leaking. Mr Dalton stated that, as well as the defects in the Harditex cladding causing current (and future) damage on the first floor, the texture coating being in direct contact with the top of the window head flashings was a likely cause of leaks in future. This texture coating work was the plasterer's responsibility.

³ *North Shore City Council v Body Corporate 189855* [2010] NZCA 235, [2010] NZLR 484 (CA).

[57] At the hearing Mr Dalton and Mr Bukowski stated that the costs of repairing the first floor would be in the vicinity of \$150,000.00 including the builder's margin and GST. This cost is greater than the amount of \$98,427.42 owing to Mr and Mrs Sen. Mr Dalton and Mr Bukowski stated that the builder was responsible for 80% of those first floor repair costs. For this reason Mr Ballard should be held jointly and severally liable for the outstanding amount of \$98,427.42.

[58] Mr Dalton and Mr Bukowski also stated that the plasterer was responsible for 20% of the first floor repair costs. They stated that the plasterer was also responsible for \$25,000.00 plus GST of the costs of repair of the ground floor.

[59] Because Mr Kiff was responsible for the plastering which contributed to the need to repair the first floor, Mr Kiff is liable with Mr Ballard for the costs of repairing it. Mr Dalton and Mr Bukowski stated that Mr Kiff contributed to the need to repair the ground floor as well. Further, it is clear from Mr Dalton's report that it would be impossible to repair the plastering defects on both floors in isolation from the repairs overall. For those reasons Mr Kiff too should be held jointly and severally liable for the outstanding amount.

[60] The experts apportioned the costs of repairing the first floor between Mr Ballard and Mr Kiff at 80:20. That is \$120,000.00 and \$30,000.00. However Mr Kiff is responsible for \$25,000.00 plus GST, \$28,750.00, towards the cost of repairing the ground floor as well. For that reason the apportionment becomes 67% to Mr Ballard and 33% to Mr Kiff. Applying those percentages to the amount outstanding of \$98,427.42, 67% is \$65,946.37, and 33% is \$32,481.05.

CONCLUSION AND ORDERS

[61] For the reasons set out, I determine that the eighth respondent Adrian Ross Kiff is liable to the claimants Mr and Mrs Sen in the sum of \$98,472.42. I order Mr Kiff to pay the claimants \$98,427.42 within 30 days of the date of this determination. I determine that Mr Kiff is entitled to recover from Mr Ballard the sum of \$65,946.37, being 67% of the sum owing to the claimants.

[62] For the reasons set out, I determine that the thirteenth respondent Wayne Ballard is liable to the claimants Mr and Mrs Sen in the sum of \$98,427.42. I order Mr Ballard to pay the claimants \$98,427.42 within 30 days of the date of this determination. I determine that Mr Ballard is entitled to recover from Mr Kiff the sum of \$32,481.05 being 33% of the amount owing to the claimants.

[63] If both Mr Kiff and Mr Ballard fulfil their obligations under this determination, Mr Ballard will pay the claimants the sum of \$65,946.37 and Mr Kiff will pay the claimants the sum of \$32,481.05. The claimants may not recover more than \$98,427.42.

[64] The claims against the fifteenth respondent Sure Plumbing Limited and the sixteenth respondent Anthony John Wong Kam are dismissed.

DATED this 2nd day of February 2012

R M Carter
Tribunal Member