

**WEATHERTIGHT HOMES TRIBUNAL
CLAIM NO: TRI-2008-101-000098**

BETWEEN **DAVID & BRENDA AITKEN**
Claimant

AND **JAN & GABRIELLE LAUDERMILK**
First Respondent

AND **DAI JONES**
Second Respondent

AND **BRENT RULE**
Third Respondent

AND **MARLBOROUGH DISTRICT
COUNCIL**
Fourth Respondent

AND **CONTOUR ROOFING (NELSON)
LTD**
Fifth Respondent

AND **PHIL FROST
(REMOVED)**
Sixth Respondent

AND **TONY SMALL
(REMOVED)**
Seventh Respondent

AND **DARIN HOSKING
(REMOVED)**
Eighth Respondent

AND **GARY FYFE**
Ninth Respondent

Hearing: On the papers

Appearances: Claimants, in person
G Malone, for First Respondent
Q Davies, for Second Respondent
Third respondent, in person
C Frame, for Fourth Respondent
D Freeman, for Fifth Respondent
Ninth respondent, in person

Decision: 22 July 2009

FINAL DETERMINATION
ADJUDICATOR: R PITCHFORTH

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INTRODUCTION

- [1] On 29 May 2009 I issued an interim determination dealing with all matters except the allocation of the liability for \$25,362.35 including GST which I ordered to be paid by Jan Ernest Laudermilk, Gabriele Wilhelmine Iris Laudermilk, Brent Anthony Rule and the Marlborough District Council.

- [2] Submissions on the allocation of the amount have been received from the Laudermilks and the Marlborough District Council.

THE LAUDERMILKS

- [3] The Laudermilk’s submissions are that their contribution should be minimal or that they should be indemnified and consequently not liable. The grounds for this submission are that they were not builders and had no special knowledge of building. By engaging professionals to design and build the house they were entitled to ensure that the building would be code compliant and were entitled to assume that changes to the plans that were implemented were authorised and allowed.

- [4] They also say that they were entitled to assume, as part of the building consent and building process, that the Council would not issue a Code compliance certificate if the works were clearly not code compliant.

[5] This was a reasonable assumption. I therefore find that Mr Rule should indemnify the Laudermilks for their contribution.

MARLBOROUGH DISTRICT COUNCIL

[6] The Marlborough District Council made submissions that liability be apportioned on the following basis:-

- Mr Rule 60%
- The Laudermilks 20%
- The Council 20%

[7] I accept that this is a suitable distribution in all the circumstances.

[8] The Council invited me to revisit the possibility that there may be an element of contributory negligence, which could be reconsidered as part of the previous decision. Those matters have already been dealt with and considered. The only matters left at large are those dealt with in this decision.

CONCLUSION AND ORDERS

[9] I have already ordered that the Council, Mr Rule and the Laudermilks are jointly and severally liable to the claimants for the sum of \$25,362.35.

[10] For the reasons set out in this determination I make the following orders:

- i. The Marlborough District Council, being liable to pay the claimants \$25,362.35, is entitled to a 20% contribution of \$5,072.47 from the Laudermilks and a 60% contribution of \$15,217.41 from Mr Rule.

- ii. The Laudermilks, being liable to pay the claimants \$25,362.35 are entitled to a 20% contribution of \$5,072.47 from the Council and a 60% contribution of \$15,217.41 from Mr Rule.
- iii. Brent Rule, being liable to pay the claimants \$25,362.35, is entitled to a 20% contribution of \$5,072.47 from the Council.
- iv. The Laudermilks are entitled to be indemnified by Mr Rule. Accordingly they are entitled to a contribution of their 20%, namely \$5,072.47 from Mr Rule.

[11] To summarise the decision, if all respondents meet their obligations under this determination, this will result in the following payments being made by the respondents to the claimants:

• First respondents, Jan and Gabriele Laudermilk	\$ 5,072.47
• Third respondent, Brent Rule	\$15,217.41
• Fourth respondent, Marlborough District Council	<u>\$ 5,072.47</u>
Total	<u>\$25,362.35</u>

[12] Brent Rule will make the payment of \$5,072.47 to Jan and Gabriele Laudermilk.

DATED at Wellington this 22nd day of July 2009.

Roger Pitchforth
Tribunal Member