



## **SUMMARY**

**Case:** Anderson Family Trust v Doyle

**File No:** TRI 2009-101-000064/ DBH 05858

**Court:** WHT

**Adjudicator:** CB Ruthe

**Date of Decision:** 16 December 2009

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This claim was for remedial costs totalling \$20,477. During a facilitated negotiation there was a partial settlement with all parties except for the second respondent, Mr Keen who did not participate. Mr Keen was the builder of the deck.

The claimants chose to pursue their claim against Mr Keen. A further settlement conference was held however the claim between the claimants and Mr Keen was not resolved. The parties therefore agreed to continue to negotiate and attempt to achieve a settlement. It was agreed if no such settlement could be achieved then the adjudicator would make a determination.

### **Claim against Mr Keen**

The Tribunal sought further clarification of the extent of the liability, if any, of the builder arising from his failure to construct the surface of the deck in the manner which had been designed, and being non-compliant with the building consent which had been granted

In preferring the assessor's evidence to that of Mr Smith (Mr Keen's expert), the Tribunal found a causal link between the way the deck was constructed. The substrate on the deck was built contrary to the plans and specifications and contrary to the building consent. This has meant the claimants are required to replace that substrate in order to effect remediation. The Tribunal therefore considered Mr Keen liable in tort for negligent construction of the deck.

### **Quantum**

The Tribunal held that Mr Keen's liability is limited to the replacement costs for the two deck substrates and therefore he was liable to the claimants for the sum of \$3,755.19.