



SUMMARY

Case: Body Corporate 81738 v Wellington City Council (Kelburn Parade)

File No: TRI 2008-101-000079 to 92/ DBH 01733 to 1745

Citation: [2010] NZWHT Wellington 15

Court: WHT

Adjudicator: C Ruthe

Date of Decision: 4 June 2010

Background

This claim relates to two separate apartment blocks which was originally filed under the 2002 Act but later abandoned and filed under the 2006 Act. Prior to the hearing, the claimants reached a substantial partial settlement with the first, fifth, seventh, eleventh and twelfth respondents and later with the third and ninth respondents. Due to the terms of the settlement and the rights of subrogation, the claimants were represented at the hearing by counsel for the Council.

Decision

Second Respondent, RA Blundell Design Ltd – design company

The Tribunal dismissed the claim against RA Blundell Design Ltd as the contract was with Mr Blundell personally and it was he who carried out that work.

Fifteenth Respondent, Mr Blundell – designer

The Tribunal dismissed the claim against Mr Blundell who was solely contracted to prepare plans in order to obtain building consent. The Tribunal however found that Mr Blundell was not negligent as the plans were of sufficient detail to enable a competent builder to build a weathertight structure.

Eighth Respondent, Bonavista Coatings (2000) Ltd – coating systems applicator

Although Bonavista did not participate in these proceedings the Tribunal found that by giving directions to and supervising the builders, it is liable for the fixing of the cladding

Tenth Respondent, Mr Lambers – director/employee of the building company

The building company was engaged on a labour-only contract and Mr Lambers was responsible for the builders working under him and was himself, personally involved in the building of one of the blocks. In relation to the cladding, the Tribunal held that Mr Lambers was not negligent in relation to the defects caused by the cladding and in any event the Tribunal had already found that Bonavista was responsible for that aspect. However on an overall examination of the damage the Tribunal held that although the builders were negligent the responsibility for the leaks is minimal.

Fourteenth Respondent, Mr Thomas – roofer and butynol membrane applicator

On the evidence the Tribunal held that Mr Thomas was negligent in a relatively major way in relation to the damage to the development.

Quantum

Repairs

The claimants have carried out repairs for \$1,044,165.82 (incl. GST), which the Tribunal accepted as the most-effective manner possible.

Consequential Damages

(i) Special Damages

The Tribunal awarded amounts for painting sealants, establishing repair costs, damaged items and compensation for the tenants' loss of quiet enjoyment. However as the claimants failed to file evidence of loss of rent, the Tribunal did not consider this particular part of the claim. Nor did it make awards for a replacement toilet seat and unconnected power cables

(ii) Interest

The Tribunal awarded interest in the amount of \$214,279.86

(iii) General Damages

The Tribunal made various awards for general damages depending on whether the claimants were owner-occupiers or non-resident owners

(iv) Summary of Quantum

The Tribunal held that the following damages are proved:

• Remediation costs	\$1,044,165.82
• General damages	\$ 185,000.00
• Interest	\$ 214,279.86
• Special damages	<u>\$ 7,021.59</u>
Total	<u>\$1,450,467.27</u>

Apportionment

Based on the Tribunal's findings, the following apportionments were made:

- Developers 45%
- Council 25%
- Bonavista 10%
- Builder 5%
- Mr Thomas 15%

Result

The claims against RA Blundell Design Ltd and Mr Blundell are dismissed. However Bonavista, Mr Lambers and Mr Thomas were ordered to pay the following amounts to the claimants:

- Bonavista \$145,046.72
- Mr Thomas \$217,570.08
- Mr Lambers \$43,873.97