



## **SUMMARY**

**Case:** Brockie & Anor as Trustees of the Brockie Trust v Millington

**File No:** TRI 2009-101-000060/DBH 5598

**Citation:** [2010] NZWHT Wellington 5

**Adjudicator:** KD Kilgour

**Date of Decision:** 11 March 2010

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### **Background**

The claimants as trustees brought the claim regarding a leaky home purchased by the Brockie Family Trust. There was a partial settlement with both the developer, Mr Millington, and the roofer Mr Minchin, making a combined settlement payment of \$60,000. The remaining claims are against the:

- Second Respondent: Mr Tribe, pre-purchase inspector.
- Fifth Respondent: Mr Stradling, Building certifier and director of Enviroplus Limited, a company providing certifying services to the territorial authority.

### **Facts**

- 2000/2001: House built
- July 2007: Trust purchased house
- September 2007: Mrs Brockie noticed leaking
- 5 December 2007: application filed with Department of Building and Housing

### **Summary of Decision**

*Second Respondent, Mr Tribe, pre-purchase inspector.*

In Mr Tribe's pre-purchase inspection report he stated that the property was well constructed and complied with the Building Code. Upon considering the evidence the Tribunal considered that as a result of his failure to flag latent and obvious weathertightness problems he had breached his duty of care and as such was liable to the claimants for the amount claimed.

*Fifth Respondent, Paul Stradling, Building Certifier and Director of Enviroplus Limited*

The claim against Mr Stradling was in tort for negligence. The Tribunal considered that Mr Stradling had breached his duty of care to the claimants through his failure to note a number of defects during the inspection process and his failure to require rectification prior to issuing the Code Compliance Certificate. Accordingly the Tribunal held Mr Stradling liable.

### **Quantum**

*Repairs*

The Tribunal accepted a schedule of repair costs that showed the total costs of works undertaken being \$142,026.40 less the claimant's calculation of betterment of \$40,525.02 making a total claim of \$101,501.38. The Tribunal was initially concerned about certain aspects of the claim but after hearing the evidence of Mr Petherick, a consulting engineer, it was concluded that there had been no betterment.

### *General Damages*

The Tribunal considered that the law in relation to claims by trusts for general damages is that such damages are not available to trusts.

### *Summary of Quantum*

Remedial Costs		\$101,501.38
Interest		\$ 6,090.00
	<b>Sub-total</b>	<b>\$107,591.38</b>
<i>Less settlement with two respondents</i>		<u>- \$ 60,000.00</u>
	<b>TOTAL</b>	<b><u>\$ 47,591.38</u></b>

### **Apportionment**

The question of joint and several liability did not arise between the remaining parties but the Tribunal did need to evaluate the extent of the liability of Mr Stradling in the context of the claims against the other settling parties. The Tribunal considered that the \$60,000 settlement with the settling parties accurately reflected their liability in the claim. The Tribunal considered a liability of 25% of the \$107,591.38 claim to be appropriate for Mr Stradling as it was in line with the level of liability imposed on certifying bodies in the majority of cases. Thus the amount payable by Mr Stradling was calculated to be \$26,192.00 being 25% of \$107,591.38 less the liability of \$3,000.00 of the eighth respondent.

### **Result**

- Mr Tribe breached his duty owed to the claimants and so was ordered to pay the claimants the sum of \$47,591.38. If the amount for which Mr Stradling is liable is recovered Mr Tribe will be limited to paying \$21,399.38
- Mr Stradling breached his duty to the claimants and so was ordered to pay the claimants the sum of \$ 26,192.00.