



SUMMARY

Case: Brodav Limited & Cook Family Trust v Waters & Ors

File No: TRI 2008-101-000059 & 66/ DBH 05513 & 05488

Court: WHT

Adjudicator: CB Ruthe

Date of Decision: 31 March 2009

Background

This determination deals with the liability of the ninth respondent, Mr Collings (bricklayer) in regards to the claim filed by Brodav Limited. It also looks at the meaning of “bad faith” under section 91 of the Weathertight Homes Resolution Services Act 2006 in determining whether an award of costs ought to be made against Mr Collings. The Tribunal held that Mr Collings was liable for his involvement on the Brodav Limited property in the amount of \$2,500 and was also ordered to pay \$1,450 in costs.

Summary of Decision

Liability of Mr Collings (Roofer)

Based on the conclusions reached in the assessor's report, the Tribunal found that Mr Collings was negligent in the way in which he affixed the coloursteel apron flashings. The Tribunal however was not prepared to draw the inference that Mr Collings was responsible for installing the butyl roof membrane as there was insufficient evidence to make that decision.

In assessing the quantum of damages to be paid by Mr Collings, the Tribunal was advised that the settlement of the Brodav claim against the Waters was \$28,500. In finding then that Mr Collings' liability was less than 10% the Tribunal ordered Mr Collings to pay the sum of \$2,500 in damages.

Costs against Mr Collings

Brodav Limited sought costs against Mr Collings pursuant to section 91 of the WHRS Act 2006. Brodav Limited argued that by not taking any steps and refusing to take up or respond to the settlement proposals, Mr Collings acted in “bad faith”.

The Tribunal's determination was also a reminder that the objectives of the WHRS Act 2006 are for speedy resolution and cost-effectiveness, and therefore settlement between the parties are significantly advanced. The Tribunal therefore actively encourages settlements prior to hearing.

In this case most parties participated in settlement negotiations but unfortunately Mr Collings did not. As a result, Mr Collings deliberate refusal to participate had a negative effect on an earlier final settlement prior to the hearing and therefore an earlier probable resolution was aborted. Moreover, it was also pointed out to the Tribunal that Mr Collings persistently failed to respond to offers of settlement. An overview of the case law surrounding the meaning of “bad faith” indicated to the Tribunal that “bad faith” depends on:

- the circumstances in which it is alleged to have occurred; and
- the range of conduct warranting such a label, which could range from the dishonest to a disregard of a legislative intent.

Therefore, based on the circumstances of the present case and Mr Collings' conduct during this claim's proceedings, the Tribunal found that Mr Collings acted in "bad faith" and was therefore ordered to pay costs in the amount of \$1,450.