



SUMMARY

Case: Overview Trustee Limited as Trustee of the Carrigafoyle Trust v Cook & Anor as trustees of the CC Trust

File No: TRI-2008-100-000023/DBH 05619

Citation: [2011] NZWHT Auckland 19

Adjudicator: R Pitchforth

Date of Decision: 25 March 2011

Background

Overview Trustee Limited brought a claim regarding their home which they purchased that developed weathertightness issues. Eight respondents were joined during the course of proceedings, but after removal of some parties the claim proceeded against:

- The third respondent, which assumed responsibility for the former Auckland City Council.
- The fourth respondent, Architectural Window Solutions Limited.
- The fifth respondent, Fearon Hay Architects Ltd, which drew the original plans and specifications.
- The sixth respondent, Mr O'Brien, the plasterer.
- The eighth respondent, Mr Cook, the developer.

Facts

- 2003: Lahasa Limited contracted Fearon to prepare plans for the construction of units.
- November 2003 – October 2006: Lahasa constructed building with Mr Cook as project manager and supervisor of construction.
- 29 September 2006: Practical completion certificate issued by Seagar & Associates.
- 13 October 2006: Purchase of property by Carrigafoyle Trust settled, subject to certain requirements (\$150,000 retained by purchasers).
- January 2007: Code Compliance Certificate (CCC) issued and retained funds released.

Summary of Decision

Third Respondent, the Auckland Council, the local authority.

The Tribunal found that the plans were sufficient for the construction of the dwelling and accordingly it was found that the Council was not negligent in approving the plans as part of the consent process.

Fourth Respondent, Architectural Window Solutions Limited.

The fourth respondent was not held liable as it was found that they had not been negligent in the choosing or installing of the windows.

Fifth Respondent, Fearon Hay Architects Ltd, building designer.

As mentioned, the Tribunal found that if the house had been built in accordance with the plans it would have been code compliant, so no breach of duty was found in regards to the plans. The Tribunal also held that it was not shown that Fearon was

involved outside its contract, or that it was negligent in relation to the doors and coating. As it was found that there was no negligence and no consequential leaks, the claim against Fearon failed.

Sixth Respondent, Mr O'Brien, the plasterer.

Whilst there was visible cracking in the external plastering, the experts agreed that this had not resulted in any leaks and as such Mr O'Brien was not held liable.

Eighth respondent, Mr Cook, the developer.

It was accepted that there were defects in the construction and installation of the parapets, fibre cement cladding, roof vents and kitchen window. As these defects could not be attributed to any of the other remaining parties, liability for repair lay wholly with developer, Mr Cook.

Quantum

Summary of Quantum

The Tribunal held that the following damages are established:

• Roof and parapet repairs	\$20,225.00
• Roof vents	\$235.00
• Kitchen window hood flashing, kitchen wall and ceiling	\$1,655.00
• GST	<u>\$3,317.25</u>
TOTAL	<u>\$25,432.25</u>

Result

The eighth respondent, Mr Cook, was ordered to pay the claimants \$25,115.00. The claims against all other parties were dismissed.