



SUMMARY

Case: Chapman v Western Bay of Plenty District Council

File No: TRI 2008-101-000100/ DBH 05327

Court: WHT

Adjudicator: R Pitchforth

Date of Decision: 11 November 2009

Background

The claimant pursued his claim for his poorly built monolithically clad house, against:

- First respondent: Western Bay of Plenty District Council
 - Second respondent: Flora Creative Ltd formerly Landmark Homes Ltd as builders
 - Fifth respondent: Mr Clarke – director of Landmark
 - Sixth respondent: Mr Blissett – employed by Landmark
 - Eighth respondent: Mr Braddock – employed as a labour-only contractor by Landmark
 - Ninth respondent: Mr Flett – director of the sub-contracted plastering company
- All other respondents were removed from the proceedings prior to the hearing.

Facts

- June 2000: Landmark contracted with the previous owners to design a house, prepare plans and specifications and construct the dwelling
- 14 July 2000: the Council issued a building consent to the previous owners
- July 2000: Landmark began construction, managed the project and engaged a labour-only contractor and subcontractors
- 11 April 2001: Council issued a Code Compliance Certificate after inspecting the house during construction and upon its completion. Landmark also issued the Cousins with a Registered Master Builder Construction Certificate upon completion
- 29 August 2003: The claimant purchased the property
- October 2003: the Master Build Guarantee was transferred to the claimant
- 10 November 2003: the claimant began living in the house
- 22 January 2007: the claimant attempted to sell the property but due to weathertight issues identified by the buyers' pre-purchase inspectors, the contract did not proceed
- 28 February 2007: the claimant applied for an assessor's report
- March 2008: remedial work was undertaken on the house
- 27 May 2008: a Code Compliance Certificate was issued regarding the repairs

Decision

Liability of the Council

The Tribunal held that the plans for consent were not of the type which would be acceptable today, but were usual and adequate at the time. In finding that the dwelling could have been constructed in a weathertight manner based on the plans, the Council was therefore not negligent in approving the plans. Notwithstanding that finding, the Tribunal held that the Council was negligent in its inspections and in the issue of the Code Compliance Certificate. As the Council relied on Landmark to maintain quality, its inspections were less thorough

Liability of Landmark – builder

Even though Landmark did not take part in the proceedings Mr Clarke as director, appeared as a party and described Landmark's activities at the time of construction from 2001-2002. Based on the evidence the Tribunal held that Landmark was liable

Liability of Mr Clarke – director of Landmark

The Tribunal held Mr Clarke negligent for failing to provide the expected day-to-day project management or for not appointing a competent person to do so. Mr Clarke paid subcontractors without checking the work or whether it was to the proper standard. He employed Mr Blissett but managed his time so that he did not undertake any building management duties. Landmark held itself to be a builder of good quality and to achieve that quality management was necessary. However there was none and Mr Clarke should have supplied that management. Mr Clarke was thereby liable.

Liability of Mr Blissett – employee of Landmark

As there was no evidence of Mr Blissett's involvement, a duty of care owed by him or that he was negligent, the Tribunal dismissed the claim against him

Liability of Mr Braddock – labour-only contractor

A schedule of tasks of the work to be undertaken was provided to Mr Braddock and he was only allowed to use the materials supplied by Landmark. His level of autonomy was therefore slight and the matters he accepted was due to his carelessness were limited. The Tribunal therefore held Mr Braddock liable for 10% of the remedial costs

Liability of Mr Flett – director of plastering company

The Tribunal found that most of the plastering defects was the responsibility of the plastering company. But as Mr Flett was responsible for managing the company to ensure that all items were sealed, he was liable for 10% of the remediation costs

Quantum

The Tribunal allowed the claimant's claim to the amount of \$165,846.90 including:

- Repair costs \$223,577.26
- Consequential costs \$ 9,627.37
- General damages \$ 5,000.00
- Lack of maintenance less \$ 22,357.73
- Items not liable less \$ 50,000.00

The Tribunal scheduled a timetable for submissions regarding interest

Contributory Negligence

Prospective owners are not required to obtain a pre-purchase report. The Tribunal found that Mr Chapman purchased a nearly-new house constructed by a well-known company with a good reputation. The dwelling was also subject to a Master Build Guarantee and had a Code Compliance Certificate. Therefore Mr Chapman was not to know that the company's reputation was unwarranted and the guarantee would not help him and so he was not contributory negligent in the purchased of the house

Contribution

The Tribunal made the following apportionments for each of the liable respondents:

- Council 10%
- Mr Clarke and Landmark 90% (jointly)
- Mr Braddock 10%
- Mr Flett 10%

Result

- Landmark and Mr Clarke were ordered to jointly pay \$165,846.90 and can recover \$116,092.83 from the Council and \$16,584.69 from Messrs Braddock and Flett
- The Council was ordered to pay \$140,846.90 and can recover \$16,584.69 from Landmark and Mr Clarke and \$16,584.69 from Messrs Braddock and Flett
- Messrs Braddock and Flett were each liable for 10% of the damage – ie \$16,584.69

If each respondent meets their obligations the following payments will be made:

- | | |
|------------------------------------|--------------|
| • Council | \$16,584.69 |
| • Landmark and Mr Clarke (jointly) | \$116,092.83 |
| • Mr Braddock | \$16,584.69 |
| • Mr Flett | \$16,584.69 |