



SUMMARY

Case: Chee & Anor v Stareast Investment Ltd & Ors

File No: TRI 2008-100-000091/ DBH 05577

Court: WHT

Adjudicator: C Ruthe

Date of Decision: 21 July 2009

Background

The claimants brought a claim regarding their leaky home whereby much of the proposed remedial work was to prevent future possible leaks rather than for the low-level damage recorded to date. The Tribunal was therefore required to make determinations regarding the involvement of the following respondents:

- First respondent Stareast Investment Ltd: vendor and developer
- Second respondent Manukau City Council: territorial authority
- Third respondent Mr Hung: director of Stareast and developer
- Fourth respondent TQ Construction Ltd: building company that erected the structure
- Fifth respondent Mr Taylor: director of TQ
- Sixth respondent Spouting and Steel Roofing World Ltd: fascia and spouting supplier and installer
- Seventh respondent Mr Brockliss: director of Excel Coatings Ltd Fosroc texturing system applicator
- Eighth respondent CSR Building Products (NZ) Ltd: supplier and installer of concrete roof

Summary of Facts

- September 2000: Mr Hung applied for building consent
- October 2000: Council issued consent to Mr Hung
- 6 October 2000: Stareast incorporated
- 20 October 2000: purchase of the dwelling was assigned from Mr Hung to Stareast
- October 2001: claimants arrived in Auckland from Malaysia
- November 2001: claimants purchased dwelling from Stareast
- May 2002: claimants moved into the dwelling
- August 2003: claimants discovered leaks. Subsequent leaks were noted later
- 1 November 2007: the claimants applied for WHRS assessor's report

Quantum

The claimants' claim was for \$443,115.32. However based on the following findings the claim was reduced to \$141,768.40:

Targeted repairs versus full reclad

The Tribunal found that targeted repairs would restore the claimants to the position they would otherwise have been in save for the leaks. The Tribunal therefore considered that an appropriate figure for targeted repairs was \$130,000. The Tribunal also held that the claimants were entitled to return to seek damages of \$216,000 for a full reclad if the Council refuses to issue a building permit for targeted repairs.

Consequential losses

The claimants also sought the total amount of \$23,236.41 for alternative accommodation, removal and storage costs, cleaning, landscaping and for NZ Leak & Heat Loss Detection Ltd. There was no challenge to these figures for those losses and so the Tribunal allowed all these costs save for the removal of the contents.

General damages

The claimants sought general damages of \$25,000. The Tribunal found there was no evidence of excessive dampness in the dwelling. Nor was there evidence that the claimants feared they could not meet repair costs or that they would lose their home. The Tribunal also found that targeted repairs should not create any significant impairment of the claimants' quality of life during the brief period of repairs. The Tribunal therefore held that an appropriate award was \$5,000 for each claimant.

Summary of damages

The Tribunal held that the claimants were entitled to claim \$141,768.40 (incl GST):

- Damages \$115,000.00
- General damages \$ 10,000.00
- Other losses \$ 16,768.40

Summary of Decision

Stareast Investment Limited: vendor and developer

Stareast accepted that it had obligations to the claimants under clause 6.2 of the sale and purchase agreement. On the evidence, the Tribunal therefore held that the proven areas of leaking established there was non-compliance with the Building Act and so the claimants' contractual claim succeeded. Moreover the Tribunal found that both Stareast and Mr Hung were the developers and as a result they both owed an absolute non-delegable duty to see that proper care and skill are exercised in the construction work. The Tribunal therefore concluded that Stareast is liable

Mr Hung: director and shareholder of Stareast

The Tribunal considered that the question is not whether a person/company has the technical capacity to adequately undertake supervision and project management, but whether the facts establish that Mr Hung orchestrated the development irrespective of competence. Based on the evidence, the Tribunal held that both Mr Hung and Stareast undertook the supervisory functions of project manager and presented themselves as such to the world. Mr Hung was therefore personally liable

TQ Construction: building company

The claimants made general allegations that TQ breached its duty of care but they did not specify which faults gave rise to the leaks. The Tribunal held that TQ was not a developer and had no responsibility for the oversight of any subcontractor. It also followed that TQ was not liable in either contract or tort for any of the failings of the subcontractors. TQ was therefore not liable

Mr Taylor: director of TQ

Having concluded that TQ is not liable to the claimants in tort, it followed that Mr Taylor is also not liable. The Tribunal stated that if it is wrong, it would have held that Mr Taylor was not liable as a director in any event because:

- TQ was involved on another construction site contemporaneously with this project
- TQ had been in existence for many years carrying on business and trading as a building company and known in the building industry as such
- TQ was not a single project company

- TQ was deliberately incorporated to create a separate legal entity that made it plain to all the world that this was the vehicle of all relevant business transactions

Spouting and Steel Roofing World Ltd: fascia and spouting supplier and installer
Spouting Steel did not participate at the hearing. The Tribunal found that there was sufficient evidence indicating that potential leaking in the relevant area was likely to contribute to future damage. Spouting Steel was therefore held to be liable

Mr Brockliss: director of Excel Coatings Ltd - Fosroc texturing system applicator
Mr Brockliss was joined on the basis that he personally carried out or supervised the plastering work carried out by Excel Coatings. The Tribunal however found that the world had no difficulty in perceiving and accepting Excel Coatings as a separate legal entity from Mr Brockliss. The claims against him were thereby dismissed

CSR Building Products (NZ) Ltd: supplier and installer of the concrete roof
Based on the evidence the Tribunal considered that CSR was negligent in the installation of the roof and was therefore liable to the claimants for their loss

The Council: territorial authority

The claimants' claim failed against the Council in relation to the issue of the building consent as there was no evidence that enabled a conclusion that at the time of the granting of the consent, the drawings and specifications were inadequate. However the Tribunal held the Council liable for its negligent inspections

Contribution

Stareast, the Council, Mr Hung, Spouting Steel and CSR were held jointly and severally liable for the full amount of the claim and were therefore entitled to a contribution from the other respondents according to their relevant responsibilities. The Tribunal therefore considered that:

- Stareast's responsibility was 65% of the total claim
- The Council's responsibility was 20% of the total claim
- Spouting Steel's responsibility was 5% of the total claim
- CSR's responsibility was 10% of the total claim

Result

- Stareast breached the duty it owed to the claimants and so was jointly and severally liable to pay the claimants \$141,800 with an entitlement of recovering a contribution of up to \$49,630 from the Council, Mr Hung, Spouting Steel and CSR
- The Council breached the duty it owed to the claimants and so was jointly and severally liable to pay the claimants \$141,800 with an entitlement of recovering a contribution of up to \$113,440 from Stareast, Mr Hung, Spouting Steel and CSR
- Mr Hung breached the duty he owed the claimants and so was jointly and severally liable to pay the claimants \$141,800 with an entitlement to recovering a contribution of up to \$42,540 from Stareast, the Council, Spouting Steel and CSR
- Mr Taylor was not found to have been negligent and accordingly claims against him were dismissed
- Spouting Steel breached the duty it owed the claimants and so was jointly and severally liable to pay the claimants \$141,800 with an entitlement to recovering a contribution of up to \$134,710 from Stareast, the Council, Mr Hung and CSR
- CSR breached the duty it owed the claimants and so was jointly and severally liable to pay the claimants \$141,800 with an entitlement to recovering a contribution of up to \$127,620 from Stareast, Mr Hung and Spouting Steel
- TQ and Mr Brockliss were not found to have been negligent and accordingly the claims against these parties were dismissed

If all liable respondents meet their obligations pursuant to this determination, the following payments will be made:

- Stareast and Mr Hung \$ 92,170
 - Council \$ 28,360
 - Spouting Steel \$ 7,090
 - CSR \$ 14,800
- Total \$141,800**