



## **SUMMARY**

**Case:** Chen & Ors v Christchurch City Council & Ors

**File No:** TRI 2008-101-000074, 103-105, 112 & 113/ DBH 04221, 04288, 04289, 4290, 04543, 04801

**Court:** WHT

**Adjudicator:** C Ruthe

**Date of Decision:** 8 May 2009

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### **Background**

Before the hearing took place for these six claims, all the claimants entered into a settlement arrangement with the first respondent (Christchurch City Council) which resulted in the discontinuance of the claims against it. This determination was therefore in relation to the remaining claims against the fifth respondent (Mr Dalziel) and the sixth respondent (Mr Withell) – as all other respondents had been removed.

### **Summary of Facts**

Peter Bevan Architect Limited designed a block of ten units in two three-storey blocks which was constructed between October 1997 and November 1998. Mr Dalziel was the sole director and sole employee of Sonic Properties Limited and Cranmer Square Development Limited, which were the companies behind this development. Both companies went into voluntary liquidation after the project ended.

### **Claim**

All the apartments subject to these claims had suffered damage in the same areas and for the same reasons outlined in the various assessors' reports. No issues arose with the findings documented in those assessors' reports. Remedial work has been completed in all 6 claims. There was no issue with the costs of remediation as the work appeared to have been done for relatively moderate sums. The claims in respect of each unit were therefore quantified as follows:

Unit 3	Repair costs: \$7,974.91 Loss of rent: \$ 520.00 Interest: \$1,120.63	\$9,615.54
Unit 4	Repair costs: \$2,852.22 Loss of rent: \$250.00 Carpet cleaning: \$80.00 Interest: \$641.89	\$3,824.11
Unit 5	Repair costs: \$9,842.55 Loss of rent: \$1,785.71 Interest: \$1,310.15	\$12,938.41
Unit 6	Carpentry (replace damaged structure): \$5,754.34 Plaster (damaged areas): \$965.25 Associated electrical work: \$118.35 External scaffolding: \$3,500.00 Reinstating of EIFS and expenses: \$7,693.50	\$18,031.44
Unit 7	Repair costs: \$12,000.00	\$12,000.00

Body Corporate	Consultants and Project Management: \$5,629.18 Repair costs: \$3,708.90	\$9,338.08
<b>TOTAL</b>		<b>\$67,747.58</b>

## Summary of Decision

### *Liability of Mr Withell*

Ms Chen was the only claimant that pursued a claim against Mr Withell as all the other claimants withdrew their claims against him. The Tribunal accepted that Mr Withell was employed as a labour-only carpenter. He was only responsible for the interior fit-out and for its quality and did not have a supervisory role in relation to any of the subcontractors. Consequently, Mr Withell was not the project manager and nor did he have any supervisory role to play. The Tribunal therefore held that Mr Withell's duty of care to Ms Chen was not breached and therefore he has no liability. Other matters that were taken into consideration in reaching this conclusion were:

- Mr Withell was bankrupt at the time he was engaged on the project and there was no evidence the terms of his bankruptcy included any exemption to trade as a project manager.
- Mr Dalziel's evidence that Mr Withell was in charge of the project appeared to the Tribunal to be a self-serving statement and not an accurate description of what occurred. Mr Withell however appeared to be a credible witness to the Tribunal.

### *Liability of Mr Dalziel*

According to Mr Dalziel, the units were not intended for sale but were to be a city investment. But circumstances changed, and as there was demand, Mr Dalziel sold most of the units. Mr Dalziel admitted that in the five years preceding the development, he had undertaken the development of seven townhouses.

Regarding Mr Dalziel's involvement in these claims, the Tribunal found that whilst Mr Dalziel chose people he considered competent to carry out various tasks in the development, he assumed the supervising responsibility of the architect at the point when he directed the architect to confine himself to doing the drawings and assumed the risks and responsibilities a builder/project manager would have undertaken when he employed the carpenter on a labour-only basis. The Tribunal therefore held Mr Dalziel was personally liable in tort as the orchestrator and conductor of the entire project. Mr Dalziel failed to properly manage the project himself or alternatively, appoint a project manager.

## Result

In finding Mr Dalziel liable to the extent of 50% of the total amount of the claim, the Tribunal ordered Mr Dalziel to pay to the claimants the amount of \$31,050.00 made up of the following rounded amounts:

• Unit 3	\$3,800.00
• Unit 4	\$1,900.00
• Unit 5	\$6,500.00
• Unit 6	\$8,000.00
• Unit 7	\$6,000.00
• Body Corporate	<u>\$4,850.00</u>
<b>TOTAL</b>	<b>31,050.00</b>

Unfortunately the company appointed liquidator no longer held the files which may have contained information identifying the plasterer and the roofer who were responsible for a number of the leak faults in this building and against whom Mr Dalziel may have been able to have sought contribution pursuant to s72(2) of the Weathertight Homes Resolution Services Act 2006.