

CLAIM NO: 00973

UNDER The Weathertight Homes Resolution Services Act 2002

IN THE MATTER of an adjudication

BETWEEN **LYNDA CHRISTINE MUNRO-ANDERSON, JOHN KEITH ANDERSON** and **LEANNE BROOKE MUNRO** as trustees of the **Munro Anderson Trust**

Claimants

AND **WAYNE RANGINUI REED**

First Respondent

AND **DESMOND JOHN SCHUMACHER**

Second Respondent

AND No Third Respondent, John W Arthur having been struck out

AND No Fourth Respondent, Waimakariri District Council having been struck out

AND **JOYCE GROUP LIMITED**

Fifth Respondent

AND **BRENT McKAY**

Sixth Respondent

DETERMINATION OF ADJUDICATOR
(Dated 30th August 2007)

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1. BACKGROUND

- 1.1 The Claimants lodged a claim under the Weathertight Homes Resolution Services Act 2002 ("the WHRS02 Act"). The claim was deemed to be an eligible claim under the WHRS02 Act. The Claimants filed a Notice of Adjudication under s.26 of the WHRS02 Act on 16 December 2005.
- 1.2 Adjudicator Scott was assigned the role of adjudicator to act for this claim, and he convened a preliminary conference by telephone on 21 June 2006, for the purpose of setting down a procedure and timetable to be followed in this adjudication. He issued fourteen Procedural Orders to assist in the preparations for the Hearing, and to monitor the progress of these preparations. Although these Procedural Orders are not a part of this Determination, they are mentioned because some of the matters covered by these Orders may need to be referred to in this Determination.
- 1.3 About one month prior to the hearing, Adjudicator Scott resigned from his position as WHRS adjudicator and was thus unable to preside over the hearing. I was assigned the role of replacement adjudicator to hear and determine the claims. The hearing was held on 13 August 2007 in meeting rooms in Christchurch. The Claimants were represented by Ms Munro-Anderson; Mr Reed, the first respondent, was represented by Mr Kevin Clay, barrister; Mr Schumacher, the second respondent, was represented by Mr Norman Farquhar of William Brown Law; Joyce Group Ltd, the fifth respondent, was represented by Mr Erne Joyce; and Mr McKay, the fourth respondent, represented himself.
- 1.4 I conducted a site inspection of the property at 9.30 am on 14 August 2007, immediately after the close of the hearing in the presence of Ms Munro-Anderson, the WHRS assessor and representatives of some of the respondents.
- 1.5 All the parties who attended the hearing were given the opportunity to present their submissions and evidence and to ask questions of all the witnesses. Evidence was given under oath or affirmation by the following:
 - Ms Lynda Munro-Anderson, one of the claimants;
 - Mr Alan Richardson, a building consultant called by the claimants;
 - Mr Don Frame, the WHRS Assessor, called by the adjudicator;
 - Mr Wayne Reed, the first respondent;

- Mr Noel Casey, a building consultant called by the first respondent;
- Mr Desmond Schumacher, the second respondent;
- Mr Erne Joyce, called by the fifth respondent.

1.6 All parties were invited to make closing submissions at the hearing after all the evidence had been given. Before the hearing was closed I asked the parties if they had any further evidence to present or submissions to make, and all responded in the negative.

2. THE PARTIES

2.1 The Claimants in this case are Ms Munro-Anderson, her father Mr John Anderson, and her daughter Ms Leanne Munro, as trustees of the Munro Anderson Trust. I am going to refer to them as "the Owners". Ms Munro-Anderson purchased the house and property at 89 Dunns Avenue, Pines Beach, North Canterbury in May 1999. She decided to carry out extensions and alterations to the house in 2002.

2.2 She employed Mr Brent McKay (the sixth respondent) to prepare plans and documents for a building consent. She entered into a building contract with Mr Wayne Reed (the first respondent), and the extensions were substantially complete prior to Christmas 2002. Disputes had arisen between Ms Munro-Anderson and Mr Reed which resulted in their contract being terminated by Ms Munro-Anderson. The property was transferred to the trustees in November 2003.

2.3 The first respondent is Mr Reed. The Owners allege that Mr Reed was negligent in the way in which he carried out his building work, which has resulted in the leaks and consequential damage.

2.4 The second respondent is Mr Schumacher, who was a building certifier at that time, and who issued an interim Code Compliance Certificate ("CCC") for the building work. Mr Schumacher was employed by Nationwide Building Certifiers Ltd ("NBCL") when he issued the CCC for this work.

2.5 The fifth respondent is Joyce Group Ltd, a company that it is claimed was in control of NBCL at this time. As NBCL is now in liquidation, it is claimed that Joyce Group Ltd should accept responsibility for its subsidiary.

- 2.6 The sixth respondent is Mr McKay, the draughtsman who prepared the plans for the building consent. It was alleged that he had prepared drawings that included work that did not comply with the Building Code, in that he had drawn a section of roofing that had too shallow a pitch. At the hearing I questioned why Mr McKay was alleged to have been negligent, when the roof that he had designed had been built quite differently from his drawings. In other words, how could it be claimed that his negligence had resulted in any leaks, when his design had not been followed?
- 2.7 None of the parties had a satisfactory answer to my question, and they all agreed that Mr McKay should be released from this adjudication. Therefore, I find that all claims that were being made against Mr McKay will fail.

3. CHRONOLOGY

- 3.1 I think that it would be helpful to provide a brief history of the events that have led up to this adjudication.

25 September 2002	Building Consent approved;
8 October 2002	Foundations completed;
18 November 2002	Pre-line inspection by Council;
16 December 2002	Final building inspection;
17 December 2002	1 st Interim Code Compliance Certificate;
24 January 2003	Owners experience leak in bathroom;
27 January 2003	Site inspection by Alan Richardson;
12 May 2003	2nd Interim Code Compliance Certificate;
19 May 2003	Owners make application to WHRS;
28 May 2004	Site inspection by WHRS Assessor;
18 June 2004	Owners rent out the property;
22 June 2004	WHRS Assessor report completed;
16 December 2005	Owners file Notice of Adjudication.

4. THE CLAIMS

- 4.1 The claims being made by the Owners in their Notice of Adjudication (25 January 2006) were for a total of \$18,921.00, being the estimated repair costs as provided by the WHRS Assessor.
- 4.2 However, as this estimate had been prepared in June 2004, Adjudicator Scott instructed the Assessor to provide an updated estimate of quantum in his

Procedural Order No 2. The Assessor provided this update in June 2006, and increased his estimates to a total of \$32,872.00. The Owners then increased their claims in line with this revised estimate.

- 4.3 Two weeks before the hearing was due to start, the Owners notified the Case Manager that they wanted to increase their claim for general damages by \$5,000.00. As the Assessor's estimates had already included an amount of \$4,120.00 for stress and anguish (plus GST), this effectively increased the claim for general damages to \$9,635.00.

5. FACTUAL ANALYSIS OF CLAIMS

- 5.1 In this section of my Determination I will consider each heading of claimed leaks, making findings on the probable cause of any leaks and then consider the appropriate remedial work. In the next section I will consider the costs of the remedial work.

- 5.2 I will not be considering liability in this section. Also, I will not be referring to the detailed requirements of the New Zealand Building Code, although it may be necessary to mention some aspects of the Code from time to time. Generally, I will be trying to answer the following questions for each alleged leak:

- Does the building leak?
- What is the probable cause of each leak?
- What damage has been caused by each leak?
- What remedial work is needed?
- And at what cost?

- 5.3 This claim is quite unusual in that none of the experts have actually found any leaks as a result of their own investigations. The WHRS Assessor noted in his report that the owner showed him the "various areas that had been damaged by external water penetration". He noted that the north wall of the bathroom still showed signs of water staining, but he took no photographs or notes indicating the areas or extent of this staining. His moisture tests indicated that all wall linings were dry, which he attributed to recent fine weather conditions. As he could find not evidence of moisture above 16%, he did not make any invasive cut-outs or exploratory holes.

- 5.4 The Assessor concluded that “there was sufficient evidence that water had penetrated the wall and floor from inadequate roof construction”, but the sole basis for this conclusion was the photographs shown to him by the Owners and taken some sixteen months earlier, and the verbal description of the leaks that Ms Munro-Anderson had given to him.
- 5.5 The first building expert to inspect this building work was Mr Alan Richardson, who visited on 27 January 2003. This was only three days after the Owners had first found water leaking into the bathroom during a particularly violent hail storm. In his report, Mr Richardson noted that the bathroom roof had been laid to fall in a different direction from that shown on the plans, had an inadequate fall, and the “valley has leaked to the interior of the residence since construction.” However, he told me that he did not see any active leaks, had not taken any moisture readings, and he did not conduct any water tests or investigations other than visual. He concludes in his report by saying that the leak was probably caused by the incorrect installation of the building paper or roofing underlay. He has no other comment to make about any leaks, or any water staining, although his report is very thorough and stretches to five pages of quite detailed criticisms of the building work.
- 5.6 Ms Munro-Anderson told me that on 24 January 2003 there was an out-of-season hailstorm that resulted in water pouring inside the bathroom, down the interior walls and over the interior door architrave. She says that she was horrified at the volume of water and took photographs. This is consistent with the information that she had given to the Building Industry Authority in May 2003, when she had said that “huge volumes of water entered my property”. However, only three days later, Mr Richardson makes what could almost be a comment in passing about a leak, and conducts no moisture testing nor carries out any further investigation to determine the source of this leak.
- 5.7 The Owners have produced in evidence a letter from two of their tenants, whom I understand occupied the house from September 2005 for about a year. The letter says that they had experienced two leaks into the bathroom area during their tenancy, and on both occasions it was very windy and under heavy rain. Unfortunately, neither of these people was called to elaborate on this information, so that I have no way of knowing exactly where the leaks were noticed, and the extent of the leaks.

Does the building Leak?

- 5.8 I will now return to my first question, that is, whether there are any leaks in this building. This is a most unusual case in that none of the experts have witnessed, nor found any direct evidence of any leaks into this building. I inspected the bathroom and surrounding walls, and I asked Mr Frame to use his moisture meter over the walls and parts of the ceiling. He could find no signs of moisture, except for some readings that were slightly higher in the vicinity of the shower box. I am satisfied that these readings were caused by the condensation from the shower that was visible in the bathroom.
- 5.9 On balance, I accept Ms Munro-Anderson's evidence that there is a leak from the roof above the bathroom, but the leak is infrequent, and only occurs when there is a particular set of circumstances, such as heavy rain or hail in conjunction with strong winds from a certain direction.

What is the probable cause of the leak?

- 5.10 I have already mentioned that it was Mr Richardson's opinion that the leak was probably caused by the incorrect installation of the building paper or roofing underlay. He did admit to me that he had not been able to actually see the building paper or roofing underlay, so that his opinion was only an assumption.
- 5.11 Mr Casey, a building expert called by Mr Reed, was of the opinion that the leak was caused by a combination of a build-up of leaves in the spouting, a subsequent build-up of water in the spouting, and the overflowing of this water onto the fascia and into the bathroom ceiling.
- 5.12 I was given a report by Mr Gerry Mitten, a building inspector who had carried out a site inspection in July 2006 at the request of Mr Schumacher. As none of the parties wished to question Mr Mitten, his report was admitted by consent. In his conclusions he states that he considers that the main cause of the leak above the bathroom was the build-up of leaves in the valley gutter, which was exacerbated by exceptionally heavy rain (or hail). These conditions, in his opinion, would cause water to build up in the valley gutter until it overflowed the edge of this gutter, and went into the ceiling space below.
- 5.13 Mr Frame, the WHRS Assessor, says that the leaf build-up is a contributing cause – maybe 20% - whereas the main cause of the leak is the low pitch of

the roof and valley gutter. He thought that the way the water was getting into the building was similar to the explanation given by Mr Mitten.

- 5.14 My inspection confirmed that the valley gutter is about 300mm wide, and the roofing iron overlaps about 100mm from each side. I noticed that there was a considerable build-up of leaves and dirt under the overhangs along both sides of the gutter, although the central channel was relatively clear of debris. The absence of leaves on the roof indicated to me that the roof had probably recently been cleared.
- 5.15 I prefer the opinion of Mr Frame and Mr Mitten on this matter, and find that the water is occasionally getting into the roof framing above the bathroom, when the rainfall is heavy and water is obstructed in the valley gutter. This causes the water to back up and overflow the edges of the valley gutter.

What damage has been caused by each leak?

- 5.16 There is no evidence of any damage that has been caused by the leak. The moisture readings indicate that the framing timbers are all below 16%, which is quite dry, and certainly below the level at which any fungal growth can survive. The Owners had repainted the bathroom before the property was rented out, and there are no water stains or residual damage evident from any more recent leaks.
- 5.17 Therefore, the only repair work that will be necessary is the work needed to stop the leak or leaks from the valley gutter.

What remedial work is needed?

- 5.18 The experts have suggested two ways to fix the leaking problems. The first way, as included in the WHRS Assessor's report, is to reconstruct the roof over the bathroom so that it falls to the west as shown on the building consent drawings. I will refer to this as Option 1.
- 5.19 The second method, which had also been suggested by the Assessor, was to reconstruct the roof to fall from south to north, but take the slope back to the ridge line of the new extension. This would involve more work, but would probably result in a much more satisfactory roof configuration. I will refer to this as Option 2.

5.20 At the hearing I suggested a third option, which was to retain the existing roof framing and pitch, but replace the corrugated iron with Butynol over plywood. None of the experts could see any potential problems with this proposal, and it was agreed that it would be a far less disruptive process as the internal linings would not be disturbed. I will refer to this as Option 3.

Cost of remedial work

5.21 The experts had some discussions about repair costs, and agreed that the probable costs were as follows;

- Option 1 between \$14,000 and \$14,900
- Option 2 between \$18,600 and \$20,950

Note that this excludes the \$5,000 allowance for stress and anguish.

5.22 It is accepted that Option 3 will be considerably cheaper than the other two options, because it avoids the need to reconstruct the roof framing and does not disturb the interior finishings. I have adjusted the calculations and costings of the Assessor to reflect these changes, and find that the probable cost of Option 3 is \$7,300.00.

6. CLAIM FOR GENERAL DAMAGES

6.1 As stated above, the Owners are claiming general damages in the amount of \$9,635.00 for the stress and anxiety as a result of finding that the house had leaks.

6.2 At the time when the hearing was held, it had been held by the High Court that adjudicators did not have the power to make awards of general damages. This was in a judgment by Stevens J in *Hartley v Balemi & Ors*, Auckland High Court, CIV 2006-404-002589, 29 March 2007. This judgment considered an appeal against a WHRS adjudication Determination, in which the learned judge held that general damages claims for mental stress did not fit comfortably within the overall scheme of the WHRS legislation and its underlying policy considerations. He concluded that WHRS adjudicators had no jurisdiction to make awards of general damages for any mental stress in the context of a claim brought before the WHRS concerning a leaky building. I informed the parties that I was bound to follow this High Court decision, unless it was reversed by the Court of Appeal or changes were made to the WHRS Act.

- 6.3 The *Hartley* decision has not been considered by the Court of Appeal, and although the Government has indicated that it intends to amend the WHRS legislation, so that adjudicators will be empowered to make awards of general damages, no such legislation has been passed. Therefore, I have no jurisdiction to award the Owners any amounts for general damages.
- 6.4 However, having received and considered the evidence relevant to this claim, I will give the conclusions that I probably would have reached if I had the authority to make an award.
- 6.5 This claim is really being made by Ms Munro-Anderson rather than by the trustees. She is the person who she says has personally suffered as a result of the leak. Therefore, I am treating this claim as a claim from Ms Munro-Anderson.
- 6.6 It was clear to me from the evidence that most of her stress and worry had been caused by the problems that she had encountered with Mr Reed when he had been building the extensions to her house. The letters that she wrote at the time to Mr Reed's lawyers, and Mr Schumacher's advisers, confirm that her concerns were predominately about workmanship and finishing work. Mr Richardson was called in to report on workmanship issues, and although he was inspecting the house three days after the leak, he did not see it as a major issue.
- 6.7 Ms Munro-Anderson told me that she could only recall noticing the leak on two occasions whilst she was living in the house – a period of eighteen months. She has taken no steps to try and fix the leak, despite having been advised to do so. I am not satisfied that this leak has been the cause of any real concern to Ms Munro-Anderson. It is not a situation which justifies an award of general damages, and I will dismiss her claim.

7. MR REED

- 7.1 Mr Reed was the builder who carried out the alterations and extensions to this house. He entered into a contract with Ms Munro-Anderson which was not put into writing. The terms of this contract are unclear, and it was terminated by Ms Munro-Anderson on 17 December 2002 after she had decided that there were too many problems with workmanship.

- 7.2 The Owners are claiming that Mr Reed should be found liable for the leaks, but they have failed to articulate the precise reasons why he should be found liable. I am uncertain as to whether they are claiming that Mr Reed was in breach of his building contract, or whether they say he was negligent and in breach of the duty of care that he owed to them as subsequent owners of the property. Having carefully considered this, I have decided that I will need to cover both options.
- 7.3 It is alleged by the Owners that Mr Reed changed the layout and construction of the roof over the bathroom, without authority, and contrary to the building consent. Furthermore, it is claimed that the roof as built has a roof pitch (or slope) that was much too shallow, thus preventing the rainwater from properly flowing off the roof. I will consider these two matters separately.

Roof Change

- 7.4 Ms Munro-Anderson planned the extension and alteration work to her house. She knew what she was planning to achieve. She engaged Mr McKay to prepare plans and specifications to enable her to obtain a building consent from the local Council, but she was really the designer. She sourced second hand windows and doors to ensure that the extension would be compatible with the original house, and specified that the exterior cladding and roof would match the original. She did not want the extension to look like an extension.
- 7.5 When it came time to carry out the building work, I am satisfied that Ms Munro-Anderson was keeping a watchful eye on progress. She was living in the house at the time, and I accept the evidence of Mr Reed that she was involved on a daily basis, and aware of what was happening on the site.
- 7.6 Ms Munro-Anderson says that she was not aware that the bathroom roof had been changed from that shown on the plans until it was pointed out to her by Mr Richardson in late January 2003. I think that she is mistaken, and I prefer the evidence of Mr Reed in that the re-alignment of this roof was discussed with her, probably at the stage before the external walls were framed up. She accepts that she was aware that the door location was changed, and that the placement of some of the windows was adjusted from the plans, and I am satisfied that she had also approved the change to the roof.

Pitch of Roof

- 7.7 The bathroom roof has been laid at a pitch of between 3 and 3.5 degrees. That is lower than the recommended minimum pitch for roofing of this type. It would not comply with the basic requirements of the Building Code, unless a producer statement could be produced from a reputable materials manufacturer. Mr Reed should have been aware of this when he constructed the roof framing and laid the roofing iron. Although Ms Munro-Anderson knew that the roof was being laid to a low slope, I do not think that she was necessarily aware that it did not comply with the Building Code.

The Building Contract

- 7.8 I have mentioned the building contract between Mr Reed and Ms Munro-Anderson, and I have also mentioned that this contract was unilaterally terminated by her. Mr Reed says that he was short paid by \$6,668.62. Ms Munro-Anderson says that on 10 December 2002, she gave her lawyer two cheques that were made out to Mr Reed, totalling \$5,597.39, with instructions that Mr Reed was to be paid when he had satisfactorily completed certain works.
- 7.9 Three days later, on 13 December, Ms Munro-Anderson wrote to Mr Reed terminating the building contract for the reasons given in her letter. However, it appears that she had a change of mind, and on 16 December she allowed Mr Reed to return for two days to finish off the building work. After that had been completed she, again, terminated the building contract, told Mr Reed not to come back, and took out a Trespass Order against him. The two cheques made out to Mr Reed were never given to him.
- 7.10 I am not required to determine why Ms Munro-Anderson took this action, or whether she was entitled to take this action. However, it is relevant that she did not notify Mr Reed of the leak which occurred on 24 January 2003, and she was not prepared to allow Mr Reed to return to attempt to repair the leak, or employ some other person to fix the leak.

Liability of Mr Reed

- 7.11 Mr Reed is a professional builder. He has a duty, whether it be in contract or in tort, to build in accordance with the requirements of the Building Code. He failed to do so, because this roof is at a pitch that is below the acceptable minimum, and there is a leak around the valley gutter. I find that he is liable to

the Owners for the costs of rectifying the defects, which I have assessed as being \$7,300.00.

7.12 It is submitted by Mr Clay, on behalf of Mr Reed, that the Owners have contributed to their own damages in a number of ways which should lead to an appropriate reduction in any award of damages against Mr Reed. He cites the following factors;

- The prolonged delay and failure to take any steps to remedy the leak,
- The owners' agreement to change the roof,
- Preventing Mr Reed from coming onto the property to carry out any repairs,
- Failing to keep the roof and gutters clear of leaves and debris,
- Failing to progress the claim to adjudication, and then causing unreasonable delays and adjournments,
- Other factors that had been raised before Adjudicator Scott in an application to have the Owners' claim struck out in December 2006.

7.13 I think that his submission has considerable weight. If Ms Munro-Anderson had allowed Mr Reed to inspect the roof in January 2003, and carry out the necessary repairs, then it would have cost her nothing. If the roof and gutters were kept clear of leaves and debris, then I am reasonably confident that there would be no leaks. I am satisfied that it is appropriate and fair to reduce the damages awarded to the Owners by one half, from \$7,300.00 to \$3,650.00.

8. MR SCHUMACHER

8.1 The Owners are claiming that Mr Schumacher was negligent in his inspection of the property on 16 December 2002, and as a result of his negligence he issued an Interim Code Compliance Certificate ("Interim CCC").

8.2 The Building Consent for this building work was issued on 25 September 2002 by the Waimakariri District Council, based on an application made by Direct Building Certifiers Ltd on behalf of Ms Munro-Anderson. She paid all the consent fees to a company called Nationwide Building Certifiers Ltd (incorporating Direct Building Certifiers). Mr Schumacher told me that he had set up the company of Direct Building Certifiers Ltd in 1998 so that he could carry out building inspection and certification work in the Rangiora district. In

July 2000, he accepted a merger proposal from Nationwide Building Certifiers Ltd ("NBCL"), and from then on he was an employee of NBCL.

- 8.3 Several building inspections were carried out on the property by NBCL to check on the work as it was being done. The earlier inspections were carried out by a Mr John Arthur, whom I understand was another employee of NBCL. On 16 December 2002, when Mr Reed's work was nearing completion, a further inspection was carried out by Mr Schumacher. He decided that the construction work had been satisfactorily completed, except for electrical, plumbing, painting of wet areas, sealing of wet area floors, spoutings and downpipes. He noted that the window sills needed to be extended, but that they had been sealed. He issued an Interim CCC.
- 8.4 After the work had been inspected by Mr Richardson in January 2003, Ms Munro-Anderson contacted Mr Schumacher and asked him to have a look at the bathroom roof. There followed an exchange of correspondence which culminated in Mr Schumacher issuing a revised Interim CCC, which recorded that the owner would need to file amended plans for the roof design and window/door placement before a final CCC could be issued.
- 8.5 The first matter that I need to consider is whether Mr Schumacher owes a duty of care to either Ms Munro-Anderson or the Owners. The first interim CCC was issued by NBCL, the company that had carried out all the inspections of the building work. Mr Schumacher was an employee, and there is no precedent that I am aware of that has established that individual building inspectors have a personal liability to clients or subsequent building owners. I have not received any compelling submissions that would persuade me to break new grounds in the area of personal liability.
- 8.6 I note that Adjudicator Scott removed John Arthur from this adjudication on the grounds that there was no evidence to suggest that Mr Arthur had assumed any sort of personal liability when he issued his inspection notices. On the contrary, it was seen that these were issued by the company. Mr Schumacher is in a similar situation, although he did issue an interim CCC, whereas Mr Arthur simply carried out inspections. However, it was Mr Arthur who first failed to note that the roof construction had been altered, or that the window/door placement had been changed.

- 8.7 Even if Mr Schumacher were to owe a duty of care to the Owners, I am not convinced that his actions have actually caused any damage. If he had refused to issue an interim CCC on 16 December 2002, or issued one with the same conditions that he had inserted on the second interim CCC on 14 May 2003, this would not have prevented the leak. A Building Certifier does not guarantee that all work has been completed in accordance with the Building Code, and it certainly is not the case when a conditional interim CCC has been issued.
- 8.8 As a result of the above conclusions, I find that the claims against Mr Schumacher must fail.

9. JOYCE GROUP LTD

- 9.1 It is claimed that Joyce Group Ltd was in control of Nationwide Building Certifiers Ltd ("NBCL") at the time when the building inspections took place, and when the interim CCC was issued. As NBCL is now in liquidation, it is claimed that Joyce Group Ltd should accept responsibility for its subsidiary.
- 9.2 There is no satisfactory evidence to support this claim against Joyce Group. The company has no shareholding in NBCL, and although Mr Erne Joyce was a shareholder and a director of NBCL, this appears to be the only connection between the two companies.
- 9.3 More to the point, and as I have already mentioned above when reviewing the situation of Mr Schumacher, the actions of the building certifiers have not caused any damage to the Owners. Even if it could be shown that Joyce Group should be liable for any negligence on the part of NBCL, and it could be established that NBCL had been negligent in this case, the victory would be a hollow one, because there is no proof that damages have been caused by its negligence.
- 9.4 As a result of the above conclusions, I find that the claims against Joyce Group Ltd must fail.

10. COSTS

- 10.1 It is normal in adjudication proceedings under the WHRS02 Act that the parties will meet their own costs and expenses, whilst the WHRS meets the adjudicator's fees and expenses. However, under s.43(1) of the WHRS02 Act,

an adjudicator may make a costs order under certain circumstances. Section 43 reads:

- (1) An adjudicator may determine that costs and expenses must be met by any of the parties to the adjudication (whether those parties are or are not, on the whole, successful in the adjudication) if the adjudicator considers that the party has caused those costs and expenses to be incurred unnecessarily by –
 - (a) bad faith on the part of that party; or
 - (b) allegations or objections by that party that are without substantial merit.
- (2) If the adjudicator does not make a determination under sub-section (1), the parties to the adjudication must meet their own costs and expenses.

10.2 None of the parties in this adjudication have made claims for the recovery of their costs, and I do not think that there are any particular circumstances that would justify an award of costs. Therefore, I will make no orders as to costs.

11. ORDERS

11.1 For the reasons set out in this Determination, I make the following orders.

11.2 Wayne Ranginui Reed is ordered to pay to the Owners the amount of \$3,650.00 in full and final settlement of all claims made by the Owners in this matter.

11.3 All claims made against Desmond John Schumacher are dismissed.

11.4 All claims made against Joyce Group Ltd are dismissed.

11.5 All claims made against Brent McKay are dismissed.

11.6 No other orders are made and no other orders for costs are made.

Notice

Pursuant to s.41(1)(b)(iii) of the Weathertight Homes Resolution Services Act 2002 the statement is made if an application to enforce this determination by entry as a judgment is made and any party takes no steps in relation thereto, the consequences are that it is likely that judgment will be entered for the amounts for which payment has been ordered and steps taken to enforce that judgment in accordance with the law.

Dated this 30th day of August 2007.

A M R DEAN
Adjudicator

792-973-Determination