[2010] NZWHT AUCKLAND 36

UNDER the Weathertight Homes Resolution Services Act 2006

IN THE MATTER of a reconsideration of the Chief Executive's decision under section 49

CLAIM NO. 6281: LYN AND HOWARD DAWSON – 15 REFLECTION DRIVE, WEST HARBOUR

ELIGIBILITY DECISION OF THE CHAIR OF THE WEATHERTIGHT HOMES TRIBUNAL

The Claim

[1] Lyn and Howard Dawson are the owners of a house at 15 Reflection Drive, West Harbour. After experiencing leaks in their home they proceeded to undertake remedial work to address the leak issues and then lodged a claim with the Department of Building and Housing. While they acknowledge the original construction cannot form the basis of an eligible claim, as it is outside the ten year period, they consider that there were extensive alterations carried out in 2003 by Maddren Homes that do form the bases of an eligible claim.

[2] However the Chief Executive of the Department of Building and Housing has concluded that a claim in relation to the 2003 work is not eligible because there is no evidence that there has been penetration of water and damage as a consequence of the work undertaken in 2003. The claimants have applied for reconsideration of the Chief Executive's decision under section 49 of the Weathertight Homes Resolution Services Act 2006 (the Act).

The Issues

[3] The key issues I need to determine are:

- Was the work done in 2003 “alterations”, and if so,
- Has water penetrated the home resulting in damage to the dwelling as a result of the materials used or the design or construction of the alterations?

Background

[4] Section 49 of the Act provides that claimants may apply to the Chair seeking a review of a decision that their claim does not comply with the eligibility criteria within 20 working days of receiving notice of the decision. On receiving such an application I must decide whether or not the claim meets the eligibility criteria. In this case after receiving the application I requested the claimants to provide further information. They have done this by way of a letter from their expert, Phillip Grigg, dated 1 November 2010.

[5] I have considered the following documents in conducting my review:

- The letter from Phillip Grigg of Babbage Consultants Limited dated 1 November 2010.

- The application for reconsideration together with the attached appendices including the homeowners’ report and email communication from John Maio.

- The letter dated 3 October 2010 from Lyn Dawson, one of the claimants.

- The assessor’s report dated 16 July 2010.

- The letter from Scott Murray of the Department of Building and Housing to the claimants dated 14 September 2010 advising that

the Chief Executive had decided the claim did not meet the eligibility criteria under the Act.

Chief Executive's Decision

[6] Although the assessor concluded that the claim, in relation to the 2003 alterations, met the eligibility criteria as set out in the Act the Chief Executive concluded that the claim was not eligible because, "there is no evidence that there has been penetration of water and damage as a consequence directly attributed to the repair work undertaken in 2003".

Claimants' Case

[7] The claimants accept that the damage to their property from the original construction which took place in 1994 is ineligible because it is out of time. However they submit that there were extensive alterations carried out to their property in 2003 which have caused further leaks and subsequent damage. They submit that John Maio and Phillip Grigg, experts they have engaged in the process of remediation, have both confirmed the presence of damage resulting from work that was not part of the original construction. They submit the 2003 alterations were substantial and resulted in the house being altered. They were advised that these alterations affected over half of the house and the work took at least six months. The previous owners also verbally advised the claimants that the cost of the alterations was in excess of $200,000.

Discussion

[8] The Act provides that for a claim to be eligible the dwelling must be:

- Built within the period of 10 years (or alterations giving rise to the claim being made within 10 years) immediately before the day on which the claim was brought;

- A leaky building, i.e. water must have penetrated it;

- Damaged as a result of the penetration of water.

[9] There is no dispute that the house at Reflection Drive is a leaky building or that it has been damaged as a result of the penetration of water. What is in dispute is whether the work that was done in 2003 can be categorised as alterations and if so whether those alterations give rise to a claim under the Act. I am satisfied from the information before me that the work done to the property in 2003 can appropriately be described as alterations. While Mr and Mrs Dawson were not the owners at the time, and therefore cannot give first hand evidence of this, the information they do have suggests that the work took over six months and cost more than $200,000. Information from the vendors and neighbours also supports the submission that the 2003 work was more than just repair work.

[10] Having accepted that there were alterations within the ten year period before the date on which the claim was filed it is now necessary for me to determine whether those alterations give rise to an eligible claim. In other words is there evidence that there has been penetration of water and damage as a consequence of the 2003 alterations. John Maio of Frame System Fabricators was involved in undertaking recent remedial work for Mr and Mrs Dawson. Phillip Grigg of Babbage Consultants Limited has inspected the property at 50 Resolution Drive and reviewed the remedial work undertaken by Frame Systems Fabricators. In a letter addressed to the Tribunal he expresses the opinion that the work undertaken by Frame System Fabricators would not have been required if the 2003 works had been completed satisfactorily. Whilst Frame Systems Fabricators undertook work to areas that were not part of the alterations work in 2003 Mr Grigg concluded that areas uncovered where the 2003 alterations were carried out disclosed extensive damage that required considerable amounts of timber to be removed and replaced, including the external and internal claddings. Given the extent of the 2003 work it is

reasonable to assume that this damage was at least in part, a consequence of the 2003 alterations.

[11] The claimants submission that the 2003 alterations are the basis of an eligible claim is also supported by the fact that the liquidator of PJM Wholesale Limited, a Maddren company, entered into a settlement with the Dawsons in full and final settlement of all claims which Mr and Mrs Dawson might have against Maddren Homes. Whilst the text of the agreement refers both to the original building of the property and the subsequent repairs in 2003 the settlement must primarily have been in relation to the 2003 alterations as at the time of the settlement any claim in relation to the original construction was limitation-barred. The amount of the settlement was not insignificant.

[12] I accordingly conclude that there have been alterations undertaken at the property at 15 Reflection Drive within the last ten years that give rise to a claim being made. I accept that it is more likely than not that those alterations have caused leaks which have resulted in damage.

Conclusion

[13] I have reconsidered the Chief Executive's decision pursuant to section 49 of the Act and, for the reasons set out above, I conclude that the 2003 alterations do form the basis of an eligible claim under the Act. I accordingly conclude that claim no. 6281 does meet the eligibility criteria as set out in the Weathertight Homes Resolution Services Act. The eligible claim is in relation to the 2003 alternations only and not the original construction.

DATED this 5th day of November 2010

_____

P A McConnell

Tribunal Chair