

**IN THE WEATHERTIGHT HOMES TRIBUNAL  
TRI-2007-101-00044**

**BETWEEN**      **Derringer Trust – as trustees Stephen  
John Tubbs and Elizabeth Mary Luisetti**  
  
Claimants

**AND**            **James Edward Upton and Susan  
Patricia Upton**  
  
First Respondent

**AND**            **Philip Shefferd Bidwell**  
  
Second Respondent

**AND**            **Philip Bidwill Architecture Limited**  
  
Third Respondent

**AND**            **Jim Cumming**  
  
Fourth Respondent

**AND**            **Lewis & Barrow Ltd**  
  
Fifth Respondent

**AND**            **REMOVED**  
  
Sixth Respondent

**AND**            **Paul Bryan Caddick**  
  
Seventh Respondent

**AND**            **Caddick Plasterers & Tilers Limited**  
  
Eighth Respondent

**AND**            **Christchurch City Council**  
  
Ninth Respondent

**AND**            **Terry Mitchell**  
  
Tenth Respondent

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**DECISION  
Dated 23 June 2008**

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## **BACKGROUND**

[1] The claimants are the trustees of the Derringer Trust. In consideration of a payment of \$220,000 they assigned their interest in these proceedings to the first and second respondents as part of a mediation settlement on 30 April 2008.

[2] Those respondents seek to recover a proportion of the amount of the settlement from the seventh and eighth respondents (Caddick). They allege that Caddick owed them a duty of care. The duty was to ensure that the cladding and plastering work would be carried out in a manner and with materials that complied with the plans and specifications, the building consent, the building code and generally accepted building standards and statements of good practice. Adherence to such standards was necessary so as not to render the house vulnerable to leaking, in particular because the need to ensure the exclusion of external moisture was well known. This duty applied in particular to the cladding and plastering work on or adjacent to doors, windows, parapets and the junctions of the roof and the walls.

[3] Caddick was served with notice of the hearing but did not take part in this process.

## **THE DAMAGE**

[4] The claimants gave evidence of the history of the leaks and the stress that it put upon them. They gave evidence of the remediation work and other costs which amounted to \$289,172.18.

[5] The first and second respondents cannot recover more than the amount of settlement. They also agree that they are entitled to only a portion of the amount that they have paid.

[6] The second respondent Mr Bidwell gave evidence that he prepared plans for the dwelling which were sufficiently detailed so as to enable a competent tradesperson to ensure weathertightness in accordance with the building code. He

said that if his plans had been followed and the work undertaken in a tradesmanlike manner then in his view a weathertight home could have been erected.

[7] Mr Bidwell said that the house was not weathertight as the result of poor tradesmanship. The associated trades had not cooperated with each other in the construction.

[8] Mr Caddick, the seventh respondent, had consulted Mr Bidwell concerning Mr Caddick's wish to fix guttering directly to a timber ribbon board rather than through the cladding system. However, due to lack of finishing detail there was significant failure of this feature.

[9] During remediation Mr Bidwell was able to observe lack of workmanship where the cladding system had been brought directly onto timber and flashings without any intermediate polystyrene as a base substrate which was required for weathertightness.

[10] Mr Bidwell does not know who was responsible for the cutting of and the modifications to the flashings for the purpose of accommodating the cladding system generally, it was the responsibility of the plasterer to ensure the integrity of those changes prior to the application of any coating system.

[11] Mr Bidwell was also able to observe during remediation that none of the flashings that were shown in the drawings had been installed. He understands that the plasterer and the builder decided to omit the flashings as the plasterer represented that the nature of the cladding system was such that weathertightness could be achieved without installing flashings.

[12] Mr Bidwell confirmed the other leaking areas were as set out in the assessor's report.

[13] The assessor found that various areas of the polystyrene cladding along with the protective coating had failed and required complete removal. He also

identified a general lack of flashings and the need to replace the spouting correctly. He noted internal damage as a result of the leaks.

[14] The assessor attended during the repairs and noted the need for the dwelling to comply with the newer requirements for weathertightness.

[15] The assessor noted other matters, including poor design and lack of workmanship in regard to a number of features. I accept that these amounted to 20% of the value of the necessary repairs.

[16] Mike Antecich also prepared an expert's report. In it he outlined the following defects in respect of the work which was the responsibility of Caddick.

[17] The bottoms of the walls were too low to the ground contrary to NZS 3604 and to the New Zealand Building Code (NZBC). When the cladding was removed and replaced there was ample clearance at the base of the external walls and finished ground level while still providing the minimal 50 mm cover below the bottom plate. The original poly fixer has therefore incorrectly set the height of the starter strip at the base of all walls and failed to comply with NZ3604, the building consent, the consent drawings and the specific requirement of the Council.

[18] The plaster cladding system was not Insulclad as required by the plans but a hybrid system. It was probably Caddoclad, an obsolete system marketed by Caddick. It did not comply with E2/AS1 at the time that the building consent was issued, when it was fitted and fixed or when it received a Code Compliance Certificate. It did not comply with the NZBC.

[19] The plaster failed to adhere to the dwelling. The lack of flashings was contrary to all proper building practice. Water entered the dwelling in at least 12 different locations. The plasterer Caddick was substantially responsible for these leaks in the dwelling.

## **LIABILITY**

[20] In view of the above facts I accept the submissions of Mr Austin Forbes QC and Mr van Shrevan that the level of damage attributable to the plasterer is 80% of the total.

[21] Section 17 Law Reform Act 1936 provides for proceedings against and contribution between joint and several tortfeasors. The section provides for the court to allocate responsibility and set the contribution as between joint tortfeasors.

[22] I find that Caddick owed a duty of care to the other respondents in that the plastering work should be carried out in a manner and with materials that complied with the plans and specifications, the building consent, the building code and generally accepted building standards and statements of good practice. The failure to do this has left the house vulnerable to leaking.

[23] Caddick is a joint tortfeasor and has a duty to contribute to the liability that the respondents have to the claimant.

[24] I find that Caddick is responsible for 80% of the value of the claim.

[25] I am advised by counsel that the respondents have made arrangements for the distribution of the amount of this claim and that I am not required to make any further apportionment.

## **SUMMARY**

[26] Paul Bryan Caddick and Caddick Plasterers & Tilers Limited are jointly and severally liable to the claimants (along with the other respondents) for the sum of \$220,000.00. Their share of the total liability is 80%.

[27] The first respondents James Edward Upton and Susan Patricia Upton and second respondent Philip Shefferd Bidwell have settled the claimant's claim for \$220,000.00. Paul Bryan Caddick and Caddick Plasterers & Tilers Limited are therefore jointly and severally liable to the first and second respondents for 80% of the amount of settlement.

[28] I direct that Paul Bryan Caddick and Caddick Plasterers & Tilers Limited jointly and severally pay to the first respondents James Edward Upton and Susan Patricia Upton and the second respondent Philip Shefferd Bidwell jointly the sum of \$176,000.00.

**DATED** this 23<sup>rd</sup> day of June 2008

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R Pitchforth  
**Tribunal Member**

Notice for payee respondent.

## NOTICE

The Tribunal in this determination has ordered that one or more parties is liable to make a payment to the claimant. If any of the parties who are liable to make a payment takes no steps to pay the amount ordered the claimant can take steps to enforce this determination in accordance with law. This can include making an application for enforcement through the Collections Unit of the Ministry of Justice for payment of the full amount for which the party has been found jointly liable to pay. In addition one respondent may be able to seek contribution from other respondents in accordance with the terms of the determination.

There are various methods by which payment may be enforced. These include:

- An attachment order against income
- An order to seize and sell assets belong to the judgment debtor to pay the amounts owing
- An order seizing money from against bank accounts
- A charging order registered against a property
- Proceeding to bankrupt or wind up a party for non-payment

This statement is made as under section 92(1)(c) of the Weathertight Homes Resolution Services Act 2006.