

IN THE WEATHERTIGHT HOMES TRIBUNAL

**TRI-2010-100-000091
[2014] NZWHT AUCKLAND 10**

BETWEEN	PETER JAMES ADAMS AND SUSAN MARGARET ADAMS Claimants
AND	TERRENCE EASTHOPE First Respondent
AND	AUCKLAND COUNCIL (Removed) Second Respondent
AND	RONALD STEVENSON Third Respondent (Removed)
AND	MICHAEL RAMSEY (Removed) Fourth Respondent
AND	COLIN SAYLES Fifth Respondent

Hearing: On the papers

Appearances: Jonathan Wood for Peter and Susan Adams
Todd Greenwood for Colin Sayles (no submissions made)

Decision: 10 October 2014

FINAL DETERMINATION ON QUANTUM
Adjudicator: P A McConnell

[1] On 13 March 2014 I issued a determination finding that Mr Sayles breached the duty of care he owed to Mr and Mrs Adams. I further concluded that the defects for which Mr Sayles had some responsibility caused the dwelling to leak and combined, necessitated the remedial work. Mr Sayles was therefore found liable for the full amount of the established claim. The decision was restricted to determining liability rather than quantum and contribution. I noted that a further hearing would be held, if necessary, to decide quantum and any cross claims or claims for contribution.

[2] Following an appeal by Mr Sayles the 13 March 2014 determination was upheld by the High Court¹. The claim has now come back to the Tribunal for determining the outstanding issues of quantum and contribution.

[3] In consultation with the parties I set a timetable for the progression of the claim. Mr Sayles had until 11 September 2014 to file any quantum briefs and to advise whether he wished to question any of the witnesses on which the claimants were relying on to establish quantum. Mr Sayles, through his counsel, advised he did not wish to file any further evidence and did not wish to question any of the witnesses. A timetable was also set for both Mr Sayles and Mr and Mrs Adams to file submissions and a hearing was scheduled for 7 October 2014 for oral submissions to be made.

[4] Mr Sayles did not file any further submissions and shortly before the scheduled hearing his counsel advised that he would not be taking any further steps in the proceedings. This decision in relation to quantum is therefore based on the evidence that has been filed in the proceedings to date and the submissions made by Mr Wood, counsel for the claimants.

[5] It is relevant to note that this claim originally went to hearing in February 2012. Prior to the hearing commencing the claimants settled their claim against all the respondents other than Mr Sayles and Mr Easthope. Neither Mr Sayles nor Mr Easthope attended that hearing. Following a formal proof hearing both were found jointly liable and I made orders as to

¹ *Sayles v Adams* [2014] NZHC 1915.

the established quantum of the claims against them. It is understood that Mr Easthope has subsequently been bankrupted.

[6] Mr Sayles appealed the Tribunal decision. The District Court set aside the orders in so far as they related to Mr Sayles and referred the matter back to the Tribunal. This resulted in a further hearing and the determination dated 13 March 2014.

[7] No additional quantum evidence has been filed since the Tribunal decision dated 2 March 2012. In addition Mr Sayles has not made any submissions or provided any other information to suggest that there should be a change to the quantum orders made back in 2012. Mr and Mrs Adams however request that the interest awarded be updated and calculated through to the date of this decision.

Cost of remedial work

[8] Following the experts' conference convened prior to the initial hearing the Council and the claimants agreed that the appropriate quantum for the remedial work required was \$180,000. I have considered all the quantum evidence that has been provided and accept that \$180,000 is the actual and reasonable cost of the remedial work required to remedy the established defects.

General damages

[9] Mr and Mrs Adams are seeking \$25,000 in general damages. The Court of Appeal in *Sunset Terraces* and *Byron Avenue*² agreed that the appropriate measure depends on individual circumstances but for owner-occupiers the usual award would be in the vicinity of \$25,000. I accept that Mr and Mrs Adams have both suffered considerable stress and difficulty as a result of having a leaky home and in carrying out the remedial work. I accordingly accept that it is appropriate to award general damages of \$25,000.

² *North Shore City Council v Body Corporate 188529 (Sunset Terraces)* [2010] NZCA 64, [2010] NZLR 486 and *O'Hagan v Body Corporate 189855 (Byron Avenue)* [2010] NZCA 65, [2010] 3 NZLR 486.

Interest

[10] The claimants are seeking interest on the special damages of \$180,000 from 18 October 2006 to the date of this decision at 5.72%¹. This equates to \$37.58 per day. I accept it is appropriate to award interest on the established costs of the remedial work from 18 October 2006 to the date of this decision. Interest of \$109,545.75 is awarded being 2,915 days at \$37.58 per day.

Conclusion on quantum

[11] The amount that has been established is \$264,545.70 which is calculated as follows:

Remedial Work	\$180,000.00
Interest	\$109,545.70
General Damages	<u>\$25,000.00</u>
	\$314,545.70
Less settlement amount	<u>\$50,000.00</u>
Total established	<u>\$264,545.70</u>

Contribution and cross-claims

[12] On 20 December 2013 Mr Sayles filed a statement of cross-claim against the Council and Michael Ramsey, the plasterer. The Council and Mr Ramsey were the parties who reached a partial settlement with the claimants prior to a hearing. Mr Sayles has not however produced any evidence in support of his cross-claims nor has he filed any submissions.

[13] Section 72(2) of the Weathertight Homes Resolution Services Act 2006, provides that the Tribunal can determine any liability of any other respondent and remedies in relation to any liability determined. In addition, s 90(1) enables the Tribunal to make any order that a Court of competent jurisdiction could make in relation to a claim in accordance with the law.

¹ Current 90 day bill rate of 3.72% plus 2% as per the Weathertight Homes Resolution Services Act 2006, cl 16, sch 3.

[14] Under s 17 of the Law Reform Act 1936 any tortfeasor is entitled to claim a contribution from any other tortfeasor in respect of the amount to which it would otherwise be liable. Section 17(2) of the Law Reform Act 1936 sets out the approach to be taken. It provides that the contribution recoverable shall be what is fair taking into account the relevant responsibilities of the parties for the damage.

[15] The only significant criticism of Mr Ramsey's work was that the substrate over which he plastered was inadequate. I have already found that Mr Sayles was responsible for the substrate work. Therefore even if I were to find that Mr Ramsey was liable his contribution would to be set at the lower end, somewhere between five and ten per cent.

[16] Given the defects with this house there is nothing to suggest that the Council contribution should be significantly different to the general range of 15-20 per cent normally awarded against territorial authorities in leaky home claims.

[17] Therefore the combined contribution of the Council and Mr Ramsey would be between 20-30 per cent. Those parties combined paid \$50,000 in settlement which is 28 per cent of the remedial costs awarded or 24 per cent of the remedial work plus the general damages awarded.

[18] The settlement amount paid by the Council and Mr Ramsey is a fair reflection of the contribution those parties combined would have most likely been ordered to pay should they have been found liable in this claim. The payments that they have already made therefore satisfy any cross-claim or claim for contribution made by Mr Sayles.

Conclusion and order

[19] The claim against Mr Sayles is proven to the extent of \$264,545.70. For the reasons set out in this determination and the preceding determinations I make the following orders:

- i. Colin Sayles is ordered to pay Peter James Adams and Susan Margaret Adams the sum of \$264,545.70 forthwith.

ii. The cross-claims against the Council and Michael Ramsey are dismissed.

DATED this 10th day of October 2014

P A McConnell

Tribunal Chair