

**IN THE WEATHERTIGHT HOMES TRIBUNAL
TRI-2007-101-000045**

BETWEEN	JOANNE MARY DOWSETT, NEIL RICHARD GRAY AND DAVID JOHN BOOTH AS TRUSTEES OF THE JOANNE DOWSETT FAMILY TRUST Claimant
AND	PAUL A CROSSWELL LIMITED First Respondent
AND	CAREYS JOINERY LIMITED Second Respondent
AND	BEVIN AND SLESSOR ARCHITECTS LIMITED (Removed) Third Respondent

Hearing: 30 April 2008

Appearances: J M Dowsett and N R Gray, for the Claimant
P A Crosswell and H C Crosswell for the first Respondents
C Parry and S C McDowell for the second Respondents

Decision: 16 May 2008

FINAL DETERMINATION
Adjudicator: R J Pitchforth

CLAIM

[1] The Joanne Dowsett Family trust, (the claimant), is the owner of a house at 22 Pukatea Street, Eastbourne.

[2] In 2001 the claimant instructed an architect to prepare plans and specifications for a renovation. The architect took no further part in the construction process.

[3] The claimant and the first respondent Paul A Crosswell Ltd (the builder) entered into an agreement for the construction of alterations.

[4] Careys Joinery Limited (the joiner), the second respondent, contracted with the builder for the supply of joinery.

[5] Building consent was applied for and issued on 19 March 2003.

[6] The application for an assessor's report was made on 11 April 2006.¹

[7] The Code Compliance Certificate has not yet been issued.

[8] The claimants moved back into the home after the alterations were complete and found that there was a leak in the master bedroom deck area.

[9] The claimant negotiated with the builder in an attempt to remedy the defects.

[10] In May 2006 the WHRS assessor appointed to this case, Haydon Miller, inspected the house.

¹ Treated as a filing of proceedings for limitation purposes s 37.

[11] Various leaks were found in the upper deck master bedroom doors, southern master bedroom window and the lounge window.

[12] On 6 August 2006 the claimant asked the builder to undertake remedial work.

[13] No agreement as to remedial work was reached. On 22 January 2007 the builder invited the claimants to take the matter to adjudication.

[14] On 21 September 2006 the claimant asked for quotes and later accepted the quotes of Wainui Joinery (1997) Ltd (Wainui Joinery) to repair the master bedroom doors and the lounge window. The work has been completed.

[15] At an inspection of the house all parties observed the windows and the evidence of leaks.

[16] At the hearing all parties accepted that the leaks had occurred.

South facing master bedroom window.

[17] There was no disagreement that this window was leaking at the time of the inspection and accordingly required repair.

Lounge window

[18] The assessor reported that the cause of the water entering the dwellinghouse at this point was a combination of leaking joinery, the unfinished cladding transition and a lack of sill flashings or air seals. He also noted leaking glazing and sash joints. The window leaked at the bottom joint.

Master Bedroom deck and doors

[19] The assessor reported stains on the chip board floor, jamb scribe was not painted and nail holes were not filled. The sealant was starting to fail. The leak was emanating from the fine gaps left between the scribe and the weatherboard.

[20] The assessor was of the view that the work that he had observed failed to meet the durability and external moisture standards.

[21] The assessor recommended repairs.

REPAIRS

[22] Paul Richardson of Wainui Joinery gave evidence. He disagreed that the architectural drawings were at fault. The system and principle have been used for hundreds of years. In fact the problem was originally minor and could have been fixed with four screws and some sealant.

[23] He said that although the sliding door unit was of reasonable construction the main leak at the bottom right corner from inside was the result of not sealing the joints properly.

[24] Wainui was asked to replace the unit and found during repairs that water had been coming through the sill/jamb join.

[25] Wainui was asked to replace a sliding window in the lounge facing the sea. It was noted that the screws and fixings were not stainless steel and were already badly rusted. The workmanship and method were substandard.

[26] The window on the south wall of the master bedroom was inspected. It appeared that it had not been properly painted before glazing. The glass rattled when tapped, indicating that it was loose enough to leak.

[27] The owners gave evidence that after a number of years of waiting for effective repairs they had lost faith in the builder and accordingly took steps to have the work repaired by another contractor, Wainui Joinery.

[28] The respondents agreed that the joinery supplied by Wainui Joinery was not substantially different to the joinery, which leaked and was removed. Mr Richardson said that the only difference was the standard of workmanship.

[29] Mr Richardson was of the view that the replacement was a simple and straightforward job.

[30] The claimants contracted with Wainui Joinery undertake the repairs and claim the following:-

New sliding doors	\$3,587.62
Installation	\$1,874.00
Attempt to repair sliding window	\$ 222.75
New sliding window and installation	\$3,225.00
Repair to plaster and paintwork	\$ 753.75
Estimated repair to small bedroom window	<u>\$ 300.00</u>
Total	\$9,963.12

RESPONSES

[31] The response to the claim by the builder is that there is no dispute that the joinery leaked.

[32] It claimed that the design was flawed. It was alleged that there were 30 shortcomings in the design. The builder claimed that it was not liable for damage resulting from poor design and it should have been able to make a decision about the repairs.

[33] Although the builder had invited the claimants to go to adjudication it stated this was not a sign that the relationship had broken down. It was unreasonable for the claimants to have then repaired the work and made the present claim.

[34] Submissions were made that the cost of repairs was too high, that the builder is not liable if work is repaired by another provider, that the claimant could have claimed against insurance and that the amount of the claim cannot exceed the cost of the work done by the builder.

[35] The response from the joiner was that it built the joinery following the plans and specifications from the architect. The leaks were the result of poor design. It said that it should not be held accountable for the failure of the sliding doors as it did not design them or specify details.

[36] Evidence was given that various unsuccessful steps had been taken to deal with leaks.

[37] The joiner also said that the removal of the window had been carelessly done, smashing the sash. They felt that they should have been able to attend and make their own repairs which would have been possible if the sash had not been damaged.

[38] The joiner submitted that the cost of the repairs was inflated and it could have had it done for less by someone else.

[39] Both respondents believed that they should have been able to recover from the designer, a party who was removed from these proceedings.

[40] In an email dated 22 January 2007 the builder said

No problem with you getting new doors from Wainui Joinery providing you and Wainui joinery ensure the original doors are retained on site for inspection at adjudication to ensure fairness to all parties concerned....

The point I am making regarding the upstairs window is that the paint has eroded from the glass/putty intersection therefore exposing the putty causing seepage under wind pressure. As the window did not leak for three years this is a maintenance issue relating to your site. Yes, three years does seem a short period in which windows need repainting but this is timber joinery in a highly exposed situation facing sea with wind blown sand.

[41] The builder called an architect, Keith Wilson, as a witness who first visited the site on the day of the hearing.

[42] Mr Wilson accepted that the repair work was done in accordance with an accepted quote and could not make further comment on the cost of work other than that it seemed to be too much.

[43] Mr Wilson inspected the windows and doors which had been retained on site. Mr Wilson gave evidence on a number of issues relating to the status of drawings, the adequacy of the drawings and their relationship to the specifications. He referred to the profiles in NZS 3610 used for State houses. He was critical of the architectural aspects of the plans. This made it difficult for the builder to provide the windows and doors. They did not ask for better details or ask the owner to take responsibility for the design.

FINDINGS

[44] I find that the joinery leaked and needed to be replaced. I find that the joinery was defective but could have been constructed so that it did not leak. It was a problem related to poor workmanship rather than design. The replacement joinery does not leak.

[45] It was not unreasonable for the claimant to arrange for repairs. I accept that an invitation to take a dispute to adjudication is an indication that the relationship has broken down and that it was reasonable to believe that the builder was unlikely to repair the leaks.

[46] No tenable evidence was provided to show that the costs of the repairs were unreasonable.

[47] I reject the other submissions of the builder as unfounded.

LIABILITY

[48] It is clear from the correspondence that the question before me is only one of the allocation of liability and quantum.

[49] Both respondents declined to make any submission relating to allocation of responsibility.

[50] The claimant had contracted with the builder for the work which was not satisfactory. The builder is in breach of contract and is therefore liable for the amount claimed.

[51] The joiner was joined to these proceedings by the builder. The builder declined to press its claim against the joiner. I make no order as between the builder and the joiner.

DECISION

[52] The claim is proved. The first respondent Paul A Crosswell Limited shall pay the claimant, the Joanne Dowsett Trust, the sum of \$9,963.12.

[53] No submissions were made on costs. Pursuant to s 91(2) I make no determination as to costs.

DATED the 16th day of May 2008.

Roger Pitchforth

Tribunal Member

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.