CLAIM FILE NO: 00036

UNDER The Weathertight Homes Resolution Services Act 2002

IN THE MATTER OF an adjudication

BETWEEN **FRANCO GODINICH** and **SUSAN MARIE GODINICH**

Claimants

AND **GUAN THYE HENG CO LTD**

First Respondent

AND **APPROVED BUILDING CERTIFIERS LTD**

Second Respondent

DETERMINATION OF ADJUDICATOR
(Dated 6 October 2003)

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1. BACKGROUND

1.1 The Claimants lodged a claim under the Weathertight Homes Resolution Services Act 2002 ("the Act"). The claim was deemed to be an eligible claim under the Act. The claimants filed a Notice of Adjudication under s.26 of the Act on 7 July 2003.

1.2 I was assigned the role of the adjudicator to act in relation to this claim and a preliminary conference was arranged for 31 July 2003 in Albany for the purposes of setting down the procedure and timetable to be followed in this adjudication.

1.3 I have been required to issue four Procedural Orders to assist in the preparations for the hearing, and to rule on applications and requests made by the parties. Although these Procedural Orders are not a part of this Determination, they are mentioned because some of the matters covered by these Orders will need to be referred to in this Determination.

1.4 A hearing was held at 10.00 am on 23 September 2003 in the Family Court Room No 2 at the North Shore District Court in Albany. Mr Godinich represented the Claimants. No-one appeared for the First Respondent. Mr Boler represented the Second Respondent. Mr Jordan, who was the Weathertight Homes Resolution Services ("WHRS") assessor who inspected the building in April 2003, attended the hearing at my request.

1.5 All parties who attended the hearing were given the opportunity to present their submissions and evidence, and to ask questions of all the witnesses. Before the hearing was closed the parties were asked if they had any further submissions to make, and all responded in the negative.

2. THE PARTIES

2.1 The claimants in this case are Franco Godinich and Susan Marie Godinich and I will refer to them as "the Owners". They purchased the house and property at 11 Cricklade Terrace, Mairangi Bay, on the North Shore in Auckland, in April 2002. The house was built between January and April 2001 and they were not the first owners or occupiers.

2.2 In the original Notice of Adjudication, Design & Draughting Services Ltd, a company that does design work in Avondale, Auckland, was cited as a respondent party. After receiving an application from that company to be removed as a party in this adjudication, I asked for further information from the Company and invited the other parties to make submissions on this application. In my Procedural Order No 4 issued on 16 September 2003, I decided that it was fair and appropriate that this company should be struck out as a party to this adjudication.

2.3 The First Respondent in this adjudication is Guan Thye Heng Co Limited. I am satisfied that all notices and orders have been served on the registered office of this company, in accordance with the requirements of s.56 of the Act. I am also aware that copies of these notices and orders were sent to Mr Chung Yi Lin, who is listed as a director of the company. This company has not responded to any of the notices or orders, did not send a representative to the preliminary conference, and did not appear at the hearing. Therefore, I have not had the benefit of receiving any submissions or evidence, and am obliged to determine the claims made against this company without its help.

2.4 The Second Respondent in this adjudication is Approved Building Certifiers Limited. This company was represented by its managing director, Mr Neil Boler, who attended the preliminary conference, the hearing and the site inspection.

3. THE CLAIMS

3.1 The claims being made by the Owners are the defects identified by the WHRS Assessor in his report dated 23 May 2003. These can be summarised as follows:

Dining Room deck	- balustrade capping	$ 4,101.00
	- waterproof membrane	8,641.00
	- step at external doors	2,630.00
Lounge deck – balustrade capping		2,807.00
Bedroom deck – balustrade capping		1,670.00
Family Room – leak in north-east corner		805.00
Window edge sealant (generally)		1,500.00
Unsealed wall penetrations		200.00
Vent at base of chimney enclosure		300.00
		$ 22,654.00

These figures include for all organisation and supervision, have a 15% contingency allowance, but do not include GST.

3.2 None of the parties in this adjudication had legal representation, and I have not received any formal submissions on liability such as would normally be available when lawyers were present. The Owners told me that they considered that both the Respondents were responsible for allowing the house to be built in contravention of the building laws, and must be liable for these breaches of the law.

3.3 The Owners told me that the First Respondent was the company that acted as the builder/developer of the house and obtained the Building Consent. I accept that the First Respondent was the "Builder" and will refer to it by that description in this Determination.

3.4 The Second Respondent was the company that carried out the inspections of the building work during construction and issued the Certificate of Code Compliance at completion. I will refer to it as "the Certifier" in this Determination. Building Certifiers are, of course, doing the job that used to be the sole domain of the local Councils. Under the Building Act 1991, although the territorial authority is primarily responsible for ensuring that all building work complies with the requirements of the Act, much of the work nowadays is done by private Certifiers.

4. FACTUAL ANALYSIS OF CLAIMS

4.1 In this section of my Determination I will consider each heading of claim, making findings on the probable cause of any leaks and considering the appropriate remedial work, and its costs.

4.2 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 Building Code from time to time. Generally, I will be trying to answer the following questions for each heading of claim,

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

4.3 Dining Room Deck – Balustrade Capping

4.3.1 The balustrade around this deck is timber framed and clad on both sides and top with Harditex, covered with a textured coating. The top of the balustrade is flat with no slope to assist with shedding the water away from the top. There are cracks along the edge of the capping in several places, and across the top. Water is leaking into the timber framing.

4.3.2 The plastic edging strip is visible in places and particularly where cracks have occurred, and the amount of moisture within the top plates indicates that the waterproof under-capping is either failing, or

is not there at all. In the two places where I removed the textured coating there were no signs of an appropriate under-capping.

4.3.3 I am satisfied that the top of the balustrade has not been constructed in accordance with the finishing details shown in Section 7 of the technical information booklet issued by the manufacturers of Harditex as produced in Mr Jordan's report. The way in which it has been constructed does not prevent moisture from penetrating into the timber framing of the balustrade.

4.3.4 It appears that not a lot of damage has been caused by these leaks and, although the full extent of any damage will not be known until the cladding has been removed, I think that it is probable that the remedial work will be restricted to a reconstruction of the top of the balustrade. There are a number of different ways of waterproofing the top, but all will involve installing a protective capping along the full length of the balustrade and ensuring proper junctions with the external walls of the house. I would accept the costings provided by Mr Jordan as being reasonable, and would set the cost of the remedial work at $4,600.00 (inclusive of GST).

4.4 **Dining Room Deck – Waterproof Membrane**

4.4.1 The drawings show that this deck was to be constructed with timber joists, spanning from a wall plate fixed to the external wall of the house to a double beam on timber posts. The deck surface was to be formed by 18 mm plywood with a waterproof membrane dressed up 150 mm on all sides. This is what the designer wanted, although waterproofing would not be a requirement of the Building Code.

4.4.2 The deck has been tiled with large reconstituted stone tiles. These tiles are also laid in the shallow longitudinal gutter and cut around a plastic outlet. There is a minimal gap of about 10 mm between the bottom edge of the Harditex wall cladding and the top surface of the tiles. Water leaks from this deck into the timber framing beneath. As this deck is not built over any of the internal rooms of the house, the water does not appear to enter the actual building, but drips onto the patio and garden beneath the deck.

4.4.3 The manner in which this deck leaks indicates that the waterproofing membrane has not been properly finished around the gutter and outlet. These leaks have caused the timber framing and soffit lining to become very wet, but as the framing appears to be H.3 treated and the soffit lining is ferro-cement board, no permanent damage has yet occurred.

4.4.4 If the deck is to be made waterproof as required by the drawings, then it will be necessary to remove the tiles, and the bottom 300 mm of cladding to allow new waterproofing to be installed. Mr Jordan's costings have been prepared along these lines, and I would accept that they are reasonable. Therefore, I would set the cost of the remedial work at $9,700.00 (inclusive of GST).

4.5 **Dining Room Deck – Step at External Doors**

4.5.1 Mr Jordan observed in his report that 'the height difference between the balcony surface level and the floor level is less than is necessary to effectively weatherproof the wall/balcony junction at the joinery units'. There is no evidence to show that any water has penetrated the building at this point, so that it cannot be said that there is a leak for this reason. I should note that the difference in levels is 55 mm, which is sufficient to satisfy the minimum requirements of the Building Code.

4.5.2 Whilst I appreciate that Mr Jordan is identifying an area that he considers to be "at risk", I cannot admit or allow a claim where there is no evidence of a leak. The Act defines a leaky building in s.5 as "a dwellinghouse into which water has penetrated as a result of any aspect of the design, construction or alteration of the dwellinghouse, or materials used in its construction or alteration:.

4.5.3 I would note that, if the Owners wish to carry out the remedial work suggested by Mr Jordan, then it would be possible to considerably improve the water/weatherproofing at the door sill without reducing the height of the ranchslider frame. These improvements would logically be done at the time that the deck was re-waterproofed, and could be done within the costs of this previous item.

4.6 **Lounge Deck – Balustrade Capping**

4.6.1 This balustrade capping is very similar to that around the dining room deck. I am satisfied that there is evidence of leaking through or around the capping. The cause of the leaking, and the extent of any damage is all as described in section 4.3 above.

4.6.2 This balustrade needs to have its top reconstructed, and I find that Mr Jordan's methodology and costings are reasonable, so that I would set the cost of the remedial work at $3,100.00 (inclusive of GST).

4.7 **Bedroom Deck – Balustrade Capping**

4.7.1 This balustrade capping is very similar to that around the dining room deck. I am satisfied that there is evidence of leaking through or around the capping. The cause of the leaking, and the extent of any damage is all as described in section 4.3 above.

4.7.2 This balustrade needs to have its top reconstructed and I find that Mr Jordan's methodology and costings are reasonable, so that I would set the cost of the remedial work at $1,900.00 (inclusive of GST).

4.8 **Family Room – Leak in North East Corner**

4.8.1 Mr Jordan detected a small area of moisture penetration on the inside of the wall beneath the electrical meter box. It is probable that water was entering the wall framing due to the lack of a proper seal around this box, although an alternative source would be the gap around an electrical conduit pipe, which was in the vicinity.

4.8.2 When I inspected the house, a liberal bead of sealant had been applied around the edge of the meter box, and around the conduit pipe. There were no visible signs of current leaking or of permanent damage.

4.8.3 I am not convinced that any remedial work will be necessary.

4.9 **Window Edge Sealant**

4.9.1 In his report Mr Jordan noticed that some cracks had developed between window joinery flanges and the wall cladding. He identified

this as a high-risk feature, which needed remedial work. He could find no evidence of moisture penetration around the windows.

4.9.2 The manufacturers of the Harditex wall board used on the exterior of this house do state that regular maintenance is required for this type of external cladding. I quote from the July 1998 brochure issued by James Hardie Building Products, which was referred to in Mr Jordan's report.

> Regular maintenance of the various jointing and coating systems is essential to ensure water ingress is prevented over the life of the building. In particular the following will need careful attention to maintain a waterproof state:
>
> - PVC flashings and jointers
> - Inseal and Butynol strips
> - Sealants, coatings and <u>any cracks at joints</u>
>
> Regular maintenance is required to meet the stated durability in the New Zealand Building Code …

[The underlining is mine.]

4.9.3 I cannot admit or allow a claim where there is no evidence of a leak, or where there is no evidence that the construction work is not in accordance with the requirements of the New Zealand Building Code.

4.10 **Unsealed Wall Penetrations**

4.10.1 In his report Mr Jordan noticed a number of unsealed pipe penetrations, which would allow water ingress into the wall framing. He did not find any evidence of moisture penetration due to the lack of sealant, with the possible exception of the conduit pipe in the family room wall (refer 4.8 above).

4.10.2 I noticed only one unsealed pipe penetration, although I did not check on all the pipes and Mr Jordan's report did not identify the location of the pipes which he considered to be lacking in sealant.

4.10.3 I am not convinced that this item of claim should be allowed. There is no evidence of any leaks, and the one unsealed pipe penetration that I noticed would be capable of being sealed in five minutes by any homeowner. I think that this is a case of *de minimus non curat*

lex, which means that the law does not concern itself with small matters

4.11 **Vent at Base of Chimney Enclosure**

4.11.1 Mr Jordan located some minor timber decay in a packer in the subfloor framing beneath the chimney base enclosure. He was alerted to this damage by using a non-invasive moisture meter around the base of the house, as he had concerns about the Harditex cladding being taken below the surrounding ground levels.

4.11.2 I would accept that the manufacturers of Harditex do state in their technical literature that the bottom of the Harditex sheets must be at least 50 mm above the adjacent finished ground levels, regardless of whether these are paved or unpaved. This is a manufacturer's requirement, but not a requirement of the New Zealand Building Code.

4.11.3 I am satisfied that this is a leak caused by the laying of the external paving in such a way that it has allowed moisture to be sucked up into the supporting framing. The extent of the damage is minor as the subfloor structural timbers are treated to withstand this extent of exposure to moisture, although the packer was not treated.

4.11.4 I would accept Mr Jordan's costings and would set the cost of the remedial work at $300.00.

5. LIABILITY FOR DAMAGE

5.1 The Owners' claims against both the Builder and the Certifier must be in tort and based on negligence. The Owners say that both the Builder and the Certifier must be held responsible for the leaks and damage. It would be my understanding that if the Builder and the Certifier are to be found liable to the Owners, then it will be necessary to find that either of them (that is, the Builder or the Certifier) is in breach of their duty of care to ensure that the house was properly built to the standards required by the Building Act.

5.2 It is now well established in New Zealand that both those who build and those who inspect building work have a duty of care to building owners. The following are relevant extracts from some of the reported judgments.

5.3 Greig J in *Lester v White* [1992] 2 NZLR 483, at pages 492-493

> The law here, so far as it is applicable to the duty of builders and of a borough council to derivative owners of land, has been well and long established and has been re-affirmed. Reference needs only to be made to *Bowen v Paramount Builders (Hamilton) Ltd* [1977] 1 NZLR 394, *Mount Albert Borough Council v Johnson* [1979] 2 NZLR 234, *Brown v Heathcote County Council* [1986] 1 NZLR 76 and *Stieller v Porirua City Council* [1986] 1 NZLR 84 to show that this is a reasoned maintained approach. It has been applied in a number of cases and no doubt has governed the approach of local authorities, builders and others who have been involved in claims which have been settled and in conduct which has anticipated and perhaps prevented the damage which this kind of case examples.

5.4 Cooke P in *Invercargill City Council v Hamlin* (1995) 72 BLR 45 at p 49

> A main point is that, whatever may be the position in the United Kingdom, homeowners in New Zealand do traditionally rely on local authorities to exercise reasonable care not to allow unstable houses to be built in breach of the byelaws. Casey J illuminates this aspect in his judgment in this case. The linked concepts of reliance and control have underlain New Zealand case law in this field from *Bowen* onwards.

5.5 Greig J in *Stieller v Porirua City Counci*l [1983] NZLR 628, at p 635

> The standard of care in all cases of negligence is that of the reasonable man. The defendant, and indeed any other Council, is not an insurer and is not under any absolute duty of care. It must act both in the issue of the permit and inspection as a reasonable, prudent Council will do. The standard of care can depend on the degree and magnitude of the consequences which are likely to ensue. That may well require more care in the examination of foundations, a defect in which can cause very substantial damage to a building. This as I have said is not a question of foundations but rather of the exterior finishing and materials.

5.6 Tipping J in *Chase v de Groot* [1994] 1 NZLR 613, at pp 619-620

> I look first at [the Builder's] position. In this respect the law can be stated as follows:
>
> 1. The builder of a house owes a duty of care in tort to future owners.
> 2. For present purposes that duty is to take reasonable care to build the house in accordance with the building permit and the relevant building code and bylaws.

3. The position is no different when the builder is also the owner. An owner/builder owes a like duty of care in tort to future owners.

The council's position can be more simply stated, again without prejudice to the scope of its duty of care in the present case. Subject to further discussion of that point the legal principles applying are:

1. A council through its building inspector owes a duty of care in tort to future owners.
2. For present purposes that duty is to exercise reasonable care when inspecting the structure to ensure that it complies with the permit and all relevant provisions of the building code and bylaws.

5.7 The Building Act requires all work to comply with the New Zealand Building Code, which is found in the First Schedule to the Building Regulations 1992. The Building Code contains mandatory provisions for meeting the purposes of the Act, and is performance-based. That means it says only what is to be achieved, and not how to achieve it.

5.8 In this particular case, I think that the following clauses in the Building Code have relevance, and they are,

B.1 STRUCTURE

OBJECTIVE

(a) Safeguard people from injury caused by structural failure

(b) Safeguard people from loss of amenity caused by structural behaviour, and

FUNCTIONAL REQUIREMENT

B.12 Buildings, building elements and site work shall withstand the combination of loads that they are likely to experience during construction or alteration and throughout their lives.

PERFORMANCE

B 1.3.1 Buildings, building elements and sitework shall have a low probability of rupturing, becoming unstable, loosing equilibrium, or collapsing during construction or alteration and throughout their lives.

B 1.3.3 Account shall be taken of all physical conditions likely to affect the stability of buildings, building elements and sitework, including…..

(e) Water and other liquids

B 1.3.4 Due allowance shall be made for:

(a) The consequences of failure

(b) The intended use of the building

B2 – DURABILITY

OBJECTIVE

B2.1 The objective of this provision is to ensure that a building will throughout its life continue to satisfy the other objectives of this code.

FUNCTIONAL REQUIREMENT

B 2.2 Building materials, components and construction methods shall be sufficiently durable to ensure that the building, without reconstruction or major renovation, satisfies the other functional requirements of this code throughout the life of the building.

PERFORMANCE

B 2.3.1 From the time a code compliance certificate is issued, building elements shall with only normal maintenance continue to satisfy the performances of this code for…

(a) 50 years for structural elements that are difficult to access or replace, or would go undetected during normal use and maintenance,

(b) 15 years for building elements that are moderately difficult to access or replace, or failure would be easily detected during normal maintenance,

(c) 5 years for elements that are easy to access and replace, and would be easily detected during normal use of the building.

E2 – EXTERNAL MOISTURE

OBJECTIVE

E 3.1(a) Safeguard people against illness or injury which could result from accumulation of internal moisture, and…

FUNCTIONAL REQUIREMENT

E 3.2 Buildings shall be constructed to avoid the likelihood of:

(a) Fungal growth or the accumulation of contaminants on linings and other building elements….

(b) Damage to building elements being caused by use of water

The Building Code also contains a number of Acceptable Solutions, which if used, will result in compliance with the New Zealand Building Code. They also serve as guidelines for alternative solutions which may, if approved by a Territorial Authority, be used if they comply with the Building Code.

5.9 It can be seen that water ingress or leaks into the building contravene E2 – External Moisture; fungal growth contravenes E3 – Internal Moisture; and water damage or rot of timber structural framing contravenes B1 – Structure, and B2 – Durability.

Findings of Fact

5.10 I have reviewed each heading of claim and would find that the following items are matters which involve construction work that does not comply with the Building Code:

Lounge deck – balustrade capping	$3,100.00
Bedroom deck – balustrade capping	1,900.00
	$5,000.00

5.11 I am not persuaded by the evidence that any of the other claims involves a breach of the Building Code, so that the Owners' claims against both of the Respondents must fail. I will briefly give my reasons.

5.12 **Dining Room Deck – Balustrade Capping & Waterproof Membrane** As quoted earlier in this Determination, the Building Code requires that buildings shall not allow water to leak from the exterior into the building. Mr Boler says that the water that leaks from the dining room deck does not enter the house and, as such, is not in breach of E2 or E3 of the Building Code.

5.13 I think that the wording of E2, where it mentions moisture entering the building, is confusing. The definition of a "building" includes all sorts of structures, such as balconies, decks and the like. The dining room deck is definitely a part of the building. However, there is a limitation placed on E2.2, which states that

> Requirement E2.2 shall not apply to buildings in which moisture from outside would result in effects what are no more harmful than those likely to arise indoors during normal use.

5.14 What this means is that, regardless of whether the underside of the deck is defined as being inside or outside the building, the deck structure and balustrade do not need to be waterproof to comply with the Building Code, because the deck should be constructed of materials that are capable of withstanding the weather. It may be highly undesirable to have water dripping from the underside of this deck, but it is not in contravention of the Building Code. The Builder is probably in breach of the terms of the building

contract because it appears that the deck was meant to be waterproofed, but the Owners were not a party to the building contract.

5.15 To put the situation in another way, the balustrade around this deck could easily have been a rail with open vertical balusters at about 100 mm centres. The decking could have been timber boards laid with a 5 mm gap between the boards. Similar balustrades and decks are found all over the country as most dwellings have a deck of some sort. When it rains the balustrade and decking gets wet, and the water drips down into the area beneath the deck. When it stops raining the structure dries out in its own time. This type of construction is considered acceptable under the Building Code.

5.16 **Family Room – Leak in North-East Corner** The absence of a suitable sealant around the meter box was a breach of the Building Code. The Owners have carried out the small amount of work needed to correct the problem. I am not convinced that any further remedial work will be necessary, so that no damages will be awarded.

5.17 **Vent at Base of Chimney Enclosure** The problem has been caused by laying the paving so that the ground water is prevented from flowing away from the base of the Harditex cladding. I am not satisfied that the paving was laid at the time the Certifier issued the Code Compliance Certificate, and there was no evidence to show that the Builder did this landscaping work. Therefore, I would dismiss this claim for lack of evidence.

Findings on Liability

5.18 **The Builder** I would find that the Builder failed to ensure that the building work on this house was carried out in accordance with the requirements of the Building Code. That failure constituted a clear and unequivocal breach of the duty of care owed to the Owners. The measure of damages should be the reasonable cost to repair the defects, and any consequential damage caused by the defects.

5.19 Therefore, I find that the Builder is liable to the Owners for the damages identified in paragraph 5.10 above, which is $5,000.00 (refer to Orders in section 8 of this Determination).

5.20 **The Certifier** It is the established law that the Certifier, when inspecting the work during construction, should take all reasonable steps to ensure that the work is being done in accordance with the building consent and the Building Code. A Code Compliance Certificate should only be issued if the Certifier is satisfied on reasonable grounds that the work complies with the Building Code in all respects.

5.21 The main question that I need to answer in respect of the liabililty of the Certifier in this case is whether the Certifier should have noticed that the balustrade cappings were inadequate. Mr Boler points out that the cappings were not visible when the texture coating had been completed, and he says that it is unrealistic to make a certifier responsible for checking this type of detail. He makes a strong point. The authorities make it clear that Council building inspectors are not Clerks of Works, but on the other hand they are not rubber stamps. It is their job to carry out the inspection in such a way to ensure that important components are properly built.

5.22 After careful consideration I have decided that the balustrade cappings were important enough for the Certifier to take steps to ensure that the under-capping was in place. It did not take me long to remove a small part of the texture coating and see that the waterproofing was questionable – and the absence of a sloping top could be seen by anyone at all times.

5.23 Therefore, I find that the Certifier breached the duty of care that he owed to the Owners, and is liable to the Owners for the damages identified in paragraph 5.10 above, which is $5,000.00 (refer to Orders in Section 8 of this Determination).

6. CONTRIBUTION BETWEEN RESPONDENTS

6.1 The Builder and the Certifier are concurrent tortfeasors in this matter as opposed to joint tortfeasors. The Builder constructed (or organised the construction of) the house in a negligent manner, whereas the Certifier was negligent in his inspections. Their negligence, however, caused the same damage. As concurrent tortfeasors they are each liable in full for the losses that their negligence has caused.

6.2 Our law does allow one tortfeasor to recover a contribution from another tortfeasor, and the basis for this is found in s.17 (1)(c) of the Law Reform Act 1936.

> Where damage is suffered by any person as a result of a tort … any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is … liable for the same damage, whether as a joint tortfeasor or otherwise…

6.3 The approach to be taken in assessing a claim for contribution is provided in s.17 (2) of the Law Reform Act 1936. It says in essence that the amount of contribution recoverable shall be such as may be found by the Court to be just and equitable having regard to the relevant responsibilities of the parties for the damage. What is a 'just and equitable' distribution of responsibility is a question of fact, and although guidance can be obtained from previous decisions of the Courts, ultimately each case will depend on the particular circumstances giving rise to the claim.

6.4 The Builder must shoulder the main responsibility for failing to build in accordance with the Building Code. The Certifier's role is essentially supervisory and I think that the responsibility should be treated as being significantly less than that of the principal author of the damage.

6.5 In the case of *Mount Albert Borough Council v Johnson* [1979] 2 NZLR 234 the Court of Appeal considered a similar situation, where the owner of a defective building succeeded against the builder and the local authority. The Court apportioned responsibility between these two defendants as 80% to the Builder and 20% to the Council.

6.6 I see no good reason to come to a different conclusion in this claim. Therefore, I find that the Certifier is entitled to an order that the Builder shall bear 80% of the total amount which the Owners would otherwise be entitled to obtain from the Certifier in damages pursuant to this Determination (refer to Orders in section 8 of this Determination).

7. COSTS

7.1 It is normal in adjudication proceedings under the 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 Act, the adjudicator may determine that one party will be responsible for more than

its own costs if these costs are unnecessarily caused by bad faith or allegations or objections that are without substantial merit.

7.2 Neither party has sought that I should exercise my discretion to make a determination pursuant to s.43(1) of the Act. I could add that if costs had been sought, then I would not have allowed them. Therefore, I find that the parties to this adjudication will meet their own costs and expenses.

8. ORDERS

8.1 For the reasons set out in this Determination, I determine and order that:

8.2

(a) Guan Thye Heng Co Ltd and Approved Building Certifiers Ltd are jointly and severally liable to pay Franco and Susan Marie Godinich the amount of $5,000.00.

(b) Guan Thye Heng Co Ltd is entitled to a contribution of $1,000.00 from Approved Building Certifiers Ltd (being 20% of the amount of $5,000.00) in the event that Guan Thye Heng Co Ltd should have paid that sum to Franco and Susan Marie Godinich.

(c) Alternatively, Approved Building Certifiers Ltd is entitled to a contribution of $4,000.00 from Guan Thye Heng Co Ltd (being 80% of the amount of $5,000.00) in the event that Approved Building Certifiers Ltd should have paid that sum to Franco and Susan Marie Godinich.

This Determination is dated 6 October 2003.

A M R DEAN
Adjudicator

792-36-detn

STATEMENT OF CONSEQUENCES

IMPORTANT

Statement of consequences for a respondent if the respondent takes no steps in relation to an application to enforce the adjudicator's Determination.

If the adjudicator's Determination states that a party to the adjudication is to make a payment and that party fails to pay the full amount determined by the adjudicator, the Determination may be enforced as an order of the District Court, including any applicable interest and costs entitlement arising from enforcement.