

SUMMARY

Case: Greaterex & Anor v Preston & Ors

File No: TRI 2008-100-000127/ DBH 05638

Court: WHT

Adjudicator: PJ Andrew

Date of Decision: 3 July 2009

Background

The claimants are the owners of a leaky building who sought judgment for \$525,420 against the respondents. Before the hearing however, the claimants settled their claims with all the respondents except Mr Tim Preston (third respondent) who was alleged to have been the builder and the party principally responsible for the negligent construction. Following the settlement, the claimants pursued the claim solely against Mr Tim Preston for the full amount. Mr Preston filed a preliminary response to the claim but chose not to attend the hearing.

Summary of Facts

- 1997 Mr Peter Preston and Ms Easton, first and second respondents bought the section. Mr Peter Preston is Mr Tim Preston's brother.
- 1998/1999 Building work began. Mr De Villiers, fourth respondent, was engaged to produce plans and specifications for building consent. Mr Ayling, fifth respondent, was contracted to put a fibreglass liner over a number of decks and roof
- 2000: First and second respondents moved into the house
- 2002: Repairs undertaken for a leak in the middle of the floor of the house but there were no further leaks during their ownership
- 19 June 2002: Mr Heron, sixth respondent, signed a Code Compliance Certificate for the house on behalf of Approved Building Certifiers Ltd
- Early 2003: Claimants purchased the house from the first and second respondents. They had obtained a pre-purchase report alerting them to some issues but did not identify that the house was leaky
- 2003-2008: Claimants experienced a number of leaks and so engaged various tradespeople to carry out minor repairs
- 2008: Mr MacKenzie and Fixed Abode Ltd, seventh and eighth respondents, carried repairs but the claimants were not satisfied with their work
- 11 March 2008: Claimants applied to WHRS

Quantum

Remedial works

The Tribunal accepted that the amount claimed for tenders (\$342,954.00) was a fair and reasonable estimate of the proposed remedial works. However the Tribunal found that some deduction should be made to the amount of \$35,235.00 for the supervision and project management of the remedial works.

Alternative accommodation and general damages

The Tribunal was satisfied that the sum of \$18,750.00 was a fair and reasonable sum for alternative accommodation. The Tribunal was also satisfied that the claimants were entitled to general damages of \$30,000

Other costs

The Tribunal was satisfied that the amount for repairs, plans, consents, tenders, and relocation costs, were all fair and reasonable amounts

Summary of quantum

The claimants established their claim to the extent of \$520,185.25 being:

• 2004-2006	\$3,736.33
• Deck and framing repairs	\$32,354.48
• Tarpaulins/protection	\$7,983.04
• Plans, consents tenders for full remedial work	\$25,679.40
• Full remedial work	\$392,816.00
• Alternative accommodation	\$18,750.00
• Relocation costs	\$8,866.00
• General damages	\$30,000.00

Summary of Decision

The Tribunal was satisfied that Mr Tim Preston was the builder of the house and responsible in large measure for the significant defects in construction. Mr Preston's duty of care as a builder was to ensure that proper skill and care was taken in the construction of the house and there was ample evidence concluding that Mr Preston breached that duty of care and that this has been the principal cause of the defects. The claimants therefore established that Mr Preston was liable in negligence to them and that he is the party principally responsible for the defects.

Other findings made by the Tribunal include:

- There was no merit to Mr Preston's allegation of a conflict of interest against Morgan Coakle which initially represented the first and second respondents but as part of the settlement agreement, it represented the claimants at adjudication
- The settlement agreement did not release Mr Preston from liability and the claimants are entitled to seek judgment against him for the full amount of the remedial works
- Due to the Tribunal's findings that Mr Preston's defective workmanship was a significant and principal cause of the damage and loss incurred by the claimants, the Tribunal held that Mr Preston's overall responsibility for the judgement sum of \$520,185.25 is approximately 61%

Result

Mr Tim Preston was ordered to pay the claimants the sum of \$520,185.25. However because the claimants have settled with all of the other respondents, they cannot recover from Mr Tim Preston an amount which would cause them to recover more than the total amount of \$520,185.25