

SUMMARY

Case: Holland & Ors as Trustees of the Harbourview Trust v Auckland City Council

File No: TRI 2009-100-000008/ DBH 05631

Court: WHT

Adjudicator: Chair of the Tribunal – PA McConnell

Date of Decision: 17 December 2009

Background

The claimants as trustees of the Harbourview Trust purchased the house which was later found to be leaky and so the claimants filed a claim with the WHRS. This decision relates to the claims against the first respondent Auckland City Council (issuing the building consent and Code Compliance Certificate and undertook inspections), the fifth and sixth respondents Max Grant Architects Ltd (MG Architects) and Mr Grant (designers), and the twelfth respondent, Mr Painton (plasterer)

Facts

- MG Architects designed the dwelling up to building consent stage. L Reeve Construction Ltd (in liquidation) was the developer and builder and its director, Mr Reeve (bankrupt) was the project manager and personally undertook some of the construction work. Mr Painton was subcontracted by Mr Reeve
- 26 January 2000: building consent was issued
- On or about November 2000: construction began
- 27 September 2001: the Council undertook a final inspection
- 2 October 2001: the CCC was issued
- December 2001: Mr Holland signed the agreement for sale and purchase. The dwelling was only a few months old
- April 2002: the property was transferred to the Trust and Mr Holland (one of the claimant trustees) and his family lived in the property since that time
- Winter 2005: claimant became aware of water ingress issues
- 2006: Mr Reeve was called back to remedy the defects but the work done did not address the problems. An architect carried out further investigations on the defects
- 21 February 2008: claimants applied to WHRS and repairs began in October 2009

Quantum

The Tribunal found that the claimants' quantum was proven to \$512,308.98 including:

• Remedial work claimed		\$520,153.23
• Betterment painting	less	\$ 10,668.00
• Roof deductions	less	\$ 30,000.00
• Resource consent	less	<u>\$ 1,600.00</u>
	Subtotal	\$477,885.23
• Alternative accommodation and letting fee		\$ 20,812.50
• Packing and storage		\$ 12,151.25
• Dog relocation		\$ 560.00
• Valuation fee		<u>\$ 900.00</u>
	Total	<u>\$512,308.98</u>

Decision

Liability of the Council

The Tribunal held that the Council was not negligent at the building consent stage for the defects that arose were due to the builder or contractor failing to follow the consented plans. Also, the lack of flashing to the junctions between the cladding materials was something a council officer would assume a competent builder or tradesperson would install even if not detailed in the plans. Therefore the Council had reasonable grounds on which it could be satisfied that the Code could be met if the building work was completed in accordance with the plans, specifications and technical literature by a competent builder. As for the inspections carried out and the issue of the CCC, the Tribunal found that although there were clearly areas of damage where it was not reasonable to expect the Council to notice, given the extent of the damage caused by the defects that should have been detected by the Council it was held to have contributed to the defects that necessitated the full reclad. Moreover the Council officer should have noticed some of the changes in the plans for the roof to the roof as built. The Council was therefore negligent in issuing a CCC without ensuring amended consents were obtained and that these changes were appropriate

Liability of Mr Grant and MG Architects – designers

The Tribunal accepted that MG Architects owed a duty of care to the claimants but that it met the standard of care required. The causes of the defects were not caused by the design but by the builder's deviations from the plans and specifications as well as the poor building practices adopted. The dwelling could have been built weathertight by a competent builder from the plans and specifications if the builder referred to manufacturer specifications and other details referred to in the plans. Accordingly the claims against Mr Grant and MG Architects were dismissed.

Liability of Mr Painton

Although Mr Painton was contracted on a labour-only basis to carry out the plastering work and was not responsible for the installation of flashings or other building work or the supervision of other builders, he owed a duty of care in the same way that other qualified tradesmen do. A competent plasterer should therefore either ensure there is flashing or appropriate jointing between the plaster and other materials. However in failing to do so, Mr Painton was negligent and thereby was held jointly and severally liable with the Council for the full amount of the claim

Contribution

The Council should have detected the widespread departures from the consented plans if an adequate inspection regime was followed. Therefore Mr Painton's contribution was set at 20% and the Council 80%

Result

- The claims against MG Architects and Mr Grant were dismissed
- The Council had to pay the claimants \$512,308.98 and may recover up to \$102,461.79 from Mr Painton for any amount paid in excess of \$409,847.19
- Mr Painton had to pay the claimants \$512,308.98 and may recover up to \$409,847.19 from the Council for any amount paid in excess of \$102,461.79

If both respondents meet their obligations they will each pay to the claimants:

- Council \$409,847.19
- Mr Painton \$102,461.79