

IN THE WEATHERTIGHT HOMES TRIBUNAL

**TRI-2007-100-000071
[2011] NZWHT AUCKLAND 60**

BETWEEN	MOHAMMED AIYUB KHAN AND REGINA SHARIAN KHAN Claimants
AND	JASWANT SAILEND SINGH First Respondent
AND	RUBEN KHAN Second Respondent (Removed)
AND	AUCKLAND COUNCIL Third Respondent (Removed)
AND	KEN SNEDDON Fourth Respondent
AND	ANTONY JOHN BANICEVICH GERA (Removed) Fifth Respondent

Hearing: 14 October 2011

Appearances: Claimants, self-represented

Decision: 2 November 2011

FINAL DETERMINATION
Adjudicator: S Pezaro

BACKGROUND

[1] Mohammed Aiyub Khan and Regina Sharian Khan altered their 1940s home in two stages, in January 2000 and May 2002. This work, described by the Khans as Job One and Job Two, resulted in the dwelling becoming a leaky building. The Khans obtained a WHRS assessor's report in June 2005 and an addendum report in October 2006. The remedial work was done between March 2007 and December 2009.

[2] The Khans claimed repair costs of \$239,710.50. They reached a settlement with Jaswant Sailend Singh, the first respondent; and the Auckland Council, the third respondent and a signed a separate settlement agreement with Ruben Khan. In accordance with their agreements, Ruben Khan paid \$40,000 and the Council paid \$122,500. However Mr Singh paid only \$5,000 of the sum of \$15,000 that he agreed to pay. The settlement between him and the Khans provided that upon payment being made by the settling party, that party was discharged from all liability. As Mr Singh did not make the payment required by the settlement agreement, the Khans are entitled to hold him liable for the balance of their repair costs.

[3] The Khans claimed from Mr Singh and Ken Sneddon, the fourth respondent, \$72,210.50 being the balance of the cost of repairs. This sum credits Mr Singh with the \$5,000 that he paid however I have credited this sum from the amount that Mr Singh is liable for under this judgment. As a result, the repair costs claimed are deemed to be \$77,210.50. The Khans also claimed general damages of \$25,000, and interest but at hearing withdrew their claim for stigma damages of \$26,000. This concession was appropriate as they had no evidence to support this claim.

[4] Neither Mr Singh nor Mr Sneddon filed any response or evidence nor did they attend the hearing on 14 October 2011. I am

satisfied that they were served notice of the hearing and have determined the claims against them on the basis of the available evidence.¹

THE CLAIMS

[5] The claims against Mr Singh and Mr Sneddon are particularised in the statement of claim dated 3 October 2011. Mr Singh and Mr Sneddon signed a contract with the Khans for project management of Job One and the Khans allege that they jointly carried out this construction, engaged and controlled all the subcontractors and were responsible for obtaining the Code Compliance Certificate.

[6] The Khans claim that Mr Singh and Mr Sneddon were negligent and caused the weathertightness defects set out paragraphs 13.1, 13.2, 13.3 and 13.4 and 13.5.2 of the claim. The Khans rely on the WHRS assessor's report and the report of their expert, Craig Turner of Forensic Building Consultants Limited for evidence of the defects and the remedial work required. I have also considered the report of the experts' conference convened prior to mediation.

REMEDIAL COSTS, DAMAGES AND INTEREST

[7] There is no challenge to the amount claimed for repairing the weathertightness defects and I accept that these costs are reasonable. Based on the briefs of evidence of Mr and Mrs Khan I conclude that an award of \$25,000 for general damages is appropriate.

[8] The Tribunal has the discretion to award interest up to but not exceeding the 90-day bill rate plus 2% in accordance with clause

¹ In accordance with ss74 and 75 of the Weathertight Homes Resolution Services Act 2006.

16, part 2 of Schedule 3 of the Weathertight Homes Resolution Services Act 2006. At the hearing Mr Khan confirmed that by the end of September 2008 he had paid more than the sum claimed for remedial costs. I therefore conclude that the Khans are entitled to an award of interest from this time until the date of judgment. The 90-day bill rate at the date of hearing was 2.8% and award interest at 4.8%.

[9] Based on the findings made above the Khans have proved their claim to the sum of \$112,922.10 calculated as follows:

Repair costs	\$77,210.50
Interest to 2 November 2011	\$10,711.60
General damages	\$25,000.00
TOTAL	\$112,922.10

THE LIABILITY OF JASWANT SINGH AND KEN SNEDDON

[10] As head contractors and project managers Mr Singh and Mr Sneddon owed the claimants a duty of care. I am satisfied that they were negligent in failing to ensure that the work that they supervised or performed met the required standards. The WHRS assessor's reports, the report of Mr Turner and the report of the experts' conference demonstrate that the work carried out by Mr Singh and Mr Sneddon caused the pleaded defects. I therefore find that they are jointly and severally liable for the resulting loss to Mr and Mrs Khan.

WHAT CONTRIBUTION SHOULD MR SINGH AND MR SNEDDON PAY?

[11] Section 72(2) of the Weathertight Homes Resolution Services Act 2006 provides that the Tribunal can determine any liability of any respondent to any other respondent and remedies in

relation to any liability determined. In addition, section 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.

[12] Under section 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.

[13] The basis of recovery of contribution provided for in section 17(1)(c) is as follows:

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 in respect of the same damage, whether as a joint tortfeasor or otherwise...

[14] 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] I see no reason to distinguish between the liability of Mr Singh and Mr Sneddon. They were equally involved in the construction and I therefore apportion their liability to the claimants at 50% each.

CONCLUSION AND ORDERS

[16] Jaswant Sailend Singh and Ken Sneddon are jointly and severally liable to pay Mohammed Aiyub Khan and Regina Sharian Khan the sum of \$112,922.10 immediately. It is acknowledged that Mr Singh has already paid \$5000 therefore this sum is credited against his apportionment.

[17] Jaswant Sailend Singh is entitled to recover a contribution from Ken Sneddon, the fourth respondent, for any amount paid in excess of \$51,461.05.

[18] Ken Sneddon is entitled to recover a contribution from the first respondent, Jaswant Sailend Singh, for any amount paid in excess of \$56,461.05.

[19] In summary if the first and fourth respondents meet their obligations under this determination, the following payments will be made by them to the claimants:

The first respondent	\$51,461.05
The fourth respondent	\$56,461.05

[20] If the first or fourth respondents fail to pay their apportionment, the claimants may enforce this determination against anyone of them up to the total amount ordered payable in paragraph 9 above.

DATED this 2nd day of November 2011

S Pezaro
Tribunal Member