

CLAIM NO: 1083

UNDER The Weathertight Homes
Resolution Services Act 2002

IN THE MATTER of adjudication

BETWEEN GILLIAN ELIZABETH
LINNEY AND EDWARD
LINNEY

Claimant

AND GREG HART

First Respondent

AND No Second Respondent
Malcolm MacMillan having
been struck out

AND No Third Respondent Andrew
Lusty having been struck out

AND No Fourth Respondent the
(Attorney General)
DEPARTMENT OF
BUILDING & HOUSING
(formerly BUILDING
INDUSTRY AUTHORITY)
having been struck out

Hearing: 24 January 2006

Appearances: Edward Linney, the Claimant in person
No appearance by or on behalf of the First Respondent
Dougal McLellan, Assessor appointed by WHRS

DETERMINATION
(Dated 8th February 2006)

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1.0 BACKGROUND

- 1.1 On 9 July 2003 the claimant made application to the Weathertight Homes Resolution Service (WHRS) under the Weathertight Homes Resolution Services Act 2002 (the Act) in respect of their property at 14 Quigley Street, Newlands, Wellington.
- 1.2 An assessor's report dated 17 May 2004 was provided by Dougal McLellan of Wellington Property Services Ltd pursuant to s10 of the WHRS Act.
- 1.3 The claim was accepted pursuant to s7 of the WHRS Act.
- 1.4 The Claimant made application pursuant to s26 of the Act for the matter to be referred to adjudication.
- 1.5 I was assigned the role of adjudicator pursuant to s27 of the Act.
- 1.6 A Preliminary conference was held on 15 February 2005 by teleconference. The preliminary conference set down the procedures for the adjudication process and timetabling.

The persons connected to the teleconference were:

- Edward Linney – Claimant
- Malcolm McMillan – Second named respondent

- Andrew Lusty – Third named respondent
- Ngaire Alexander – Deans & associates - counsel for the second named respondent
- Mary Haggie – Kensington Swan – counsel for the fourth named respondent
- Richard Raymond, counsel for the Third Respondent
- Paul Robertson, counsel for the Fourth Respondent

1.7 Greg Hart, the first respondent did not connect to the teleconference. The WHRS contacted Mr Hart on many occasions and established that all documentation was properly served and received but Mr Hart refused to participate in the proceedings other than to send a letter dated August 2004 and continue to send copies of that letter as his response to the claim.

1.8 By Procedural Order No. 6 dated 24 May 2005 the Second and Third Respondents were struck out as parties to the adjudication proceedings.

1.9 The fourth named respondent was the Building Industry Authority (“BIA”) and as a result of the legal proceedings in which the BIA was involved known as the *Sacramento* case the proceedings of this claim were adjourned until the outcome of the *Sacramento* case was known.

1.10 The claimant gave notice of withdrawal of a claim against the Fourth Respondent and by Procedural Order No 11 dated 1 December 2005 the Fourth Respondent was struck out as party to the adjudication proceedings.

1.11 A hearing was conducted before me which commenced at 10.00am on 24 January 2006. The hearing was held at the Arbitrators & Mediators Institute of NZ Rooms, Lambton Quay, Wellington.

1.12 The parties that were present or represented from the outset of the hearing were:

- The Claimant Edward Linney

1.13 Greg Hart, the First Respondent was not present or represented at the hearing. I explained the situation regarding a party that does not participate in the proceedings and referred to ss.37 and 38 of the Act.

1.14 Parties that appeared as expert witnesses or were called by me to assist the tribunal were:

- Dougal McLellan – WHRS appointed Assessor

1.15 At the commencement of the hearing I outlined my powers under the Act and that the Claimant had to present his evidence as if the other party was present to cross examine him on that evidence. The onus was still on the Claimant to make a case for any claim against the First Respondent. I would be allowing the Claimant and the Assessor to present any evidence under oath or affirmation and I would use my inquisitorial powers if necessary to establish the facts. However I would not be as strict on the rules of evidence as perhaps the Higher Courts, I would however be maintaining the principles of natural justice.

1.16 The question of an inspection of the property was discussed at the commencement of the hearing and an inspection was made later in the morning by the Adjudicator who was accompanied by those attending the hearing.

1.17 During the hearing I advised that the Responses to the Notice of Adjudication by the First Respondent was his letter dated 6 August 2004 and that I would expect the Claimant and the Assessor to assist me in interpreting the statements in that letter. The response was a matter of record and I would be taking it into account in my considerations.

1.18 The Claimant was given the opportunity to present his submissions and evidence and to cross examine the Assessor on the content of his report.

2.0 THE PROPERTY

- 2.1 The dwellinghouse is situated at 14 Quigley Street, Newlands, Wellington and is owned and occupied by the claimant the owner.
- 2.2 The original dwelling was constructed in 1974. A building consent was issued by Wellington City Council dated 8 April 2002 to Approved Building Certifiers Ltd. With the Project Description “*Additions and alterations – addition to living room and garage.*” Three drawings and a specification were attached showing the extent of the alterations and additions. The Building Consent was based on Approved Building Certifiers Ltd Building Certificate.
- 2.3 Construction of the alterations and additions was from April 2002 to December 2002.
- 2.4 A Code Compliance Certificate was issued by Approved Building Certifiers dated 4 December 2002 and Advice of Completion of Building Work dated 28 January 2003 was sent by Approved Building Certifiers Ltd to Wellington City Council.
- 2.5 The builder/developer was Mr Greg Hart and Mr Hart is the First Respondent
- 2.6 The property was purchased by the Claimant in April 2003.
- 2.7 The construction of the extensions to the house is concrete slab foundations, timber framing, part weatherboard lining, part solid plaster and part asbestos cement exterior cladding, aluminium windows corrugated galvanised roofing and plaster gypsum board internal linings.
- 2.8 Work has been carried out by the Claimant to prevent the water ingress and to mitigate damage.
 1. Plumbing repairs at roof

2. Excavated trenches at north, south and east walls inside existing foundation lines, installed field drains and covered in free draining chips, installed sump and automatic pump under existing house area and ran discharge pipe to outside stormwater drain at back of house.

3. Install concrete sump at lowest pint by the garage door and excavate trench, install field drain and free draining gravel covered with paving slabs and discharge to the west past the garage door.

The Claimant tabled photographs of the completed work at items 1 and 2 and these were admitted as Exhibit 'A'.

3.0 THE CLAIM

3.1 The basis of the claim against the First Respondent Mr Hart as stated by the Claimant is based on the Assessors report and the reliance on the information in the Assessors report is outlined in the particulars of claim prepared by Mr Linney dated 9/6/05.

3.2 The Assessor's report lists as Cause(s)

5.1. Cause(s)

The cause(s) of the water entering the dwelling house is/are as follows:

Rumpus Room/Sub Floor Space

5.1.1 The outer face of the original concrete perimeter wall has no waterproof 'tanking'. At the north elevation, the polythene moisture barrier placed between the excavated ground and the new concrete retaining wall is inadequate to prevent moisture ingress into the dwelling.

5.1.2 *At the south elevation the excavated ground is not retained and water flows through the ground into the sub-floor space unimpeded. Moisture is contacting the new partition between bedroom 4 and the sub-floor space.*

5.1.3 *Water is flowing through the ground into the sub-floor space. Water collecting behind the rumpus Room east and south walls had no means of escape prior to installation of field drains. Measures to prevent water accretion have not been detailed on the plans and specifications (Appendices, p34). To prevent water ingress into the dwelling from the sub floor space, a concrete beam or 'nib' as detailed on plans has not been formed (Appendices, p22).*

Bedroom Four

5.1.4 *At the south elevation retaining wall, the water proofing tanking is inadequate and the concrete is pourous. Moisture is diffusing through the new concrete retaining wall of Bedroom 4.*

5.1.5 *Earth has been backfilled against the retaining wall without drainage aggregate or provision for drainage below the dwelling's lower floor level. The plans make no provision for field drains.*

5.1.6 *Wind driven rain is entering the wall void through the wall cladding's unfinished sections and openings and also through gaps in the cladding.*

Garage/Entranceway

5.1.7 *There is no provision for discharge of surface water away from the Garage and Entranceway. Water is trapped by the new concrete patio formed in front of the Garage door.*

3.3 The Assessor's report lists the damage as:

"5.2 Damage

The nature and extent of any damage caused by the water entering the dwellinghouse is as follows:

Rumpus Room

5.2.1 The Stairwell bottom plate is damp with mould growth on the surface. Decay is inevitable.

5.2.2 The north wall bottom plate and wall stud are decayed.

5.2.3 There is mould growth on the back of the carpet (appendices, photo 35)

5.2.4 There is mould growth on the gib board of the east and south partitions of the Rumpus Room.

5.2.5 The bottom plate of the Rumpus Room (east partition) has mould growth, is damp and is in contact with the earth. Decay is inevitable.

Bedroom Four

5.2.6 At the junction of the new Bedroom 4 partition with the original concrete foundation wall, timber has decayed.

5.2.7 Gib board linings from south wall are soft and rotten. The MDF skirting board has mould growth and is water damaged and swollen.

5.2.8 There is mould growth on the timber strapping.

5.2.9 There is mould on the back of the carpet. The carpet smooth edge nails are corroded.

Garage/Entranceway

5.2.10 There is mould growth along the lower edge of the wall cladding.

3.4 The Assessor's report lists the repairs as:

“5.3 Repairs

The work needed to make the dwellinghouse watertight and repair the damage is as follows:

Rumpus Room

5.3.1 North Elevation:

- i) Excavate earth from north side of the downstairs extensions.*
- ii) Install a ground drainage system 200mm below the level of the dwelling's concrete floor. (Refer to Footnotes 1 at end of this section)*
- iii) Apply waterproof 'tanking' suitable for preventing moisture ingress into the dwelling (Refer to Footnotes 1 at end of this section)*
- iv) Backfill with drainage aggregate.*

5.3.2 Replace decayed sections of the north wall bottom plate and wall stud. Replace gib board as required. Plaster and paint to match with existing.

5.3.3 Clean the carpet to remove mould.

5.3.4 Clean away mould growth from the gib board and timber framing of the east and south partitions of the Rumpus Room and apply a suitable mould preventative solution.

5.3.5 Install a concrete 'nib' or ground beam around the perimeter of the Rumpus Room east and south partitions to prevent water ingress from sub-floor space into the dwelling.

5.3.6 Remove earth from contact with the bottom plate of the Rumpus Room partitions. Clean mould growth from all surfaces.

Bedroom 4

5.3.7 Replace decayed timber at the junction of new Bedroom 4 partition with the original concrete foundation wall.

5.3.8 Replace gib board wall linings as required. Install new skirting boards as required. Plaster and paint all surfaces to match with existing.

5.3.9 Clean away mould from the south wall and apply a suitable mould preventative solution.

5.3.10 Clean the carpet to remove mould.

5.3.11 Retaining Wall

i) Excavate earth from the south side of the downstairs extensions.

ii) Install a ground drainage system 200mm below the level of the dwelling's concrete floor. (Refer to Footnotes 1 at end of this section).

iii) Apply waterproof 'tanking' suitable for preventing moisture ingress into the dwelling. (Refer to Footnotes 1 at end of this section).

iv) Backfill with drainage aggregate.

5.3.12 Replace damaged sections of wall cladding. Complete the wall cladding to ensure full protection from rain water and moisture vapour.

5.3.13 Seal the gap between fibrous cement 'weatherboards' and the sheet cladding below.

Garage/Entranceway

5.3.14 Field drains for the north elevation will discharge water to the west side of the dwelling. Drainage for the discharge of surface water from the Garage and Entranceway is best incorporated into that system.

3.5 Although the Claimant had purchased the property from the First Respondent, Mr Hart, shortly after completion of the alterations and extensions the Claimant confirmed at the hearing that the claim against Mr Hart was not based on contract. The claim by the Claimant against the First Respondent relies on the assessor's report and it was submitted by the Claimant that the majority of the liability for the damage to the property rests with the builder/developer. The cause of action can be deduced from various statements in the assessor's report including "*Alterations carried out by home owner without adequate skill or care.*" and at paragraphs 4.3.1 to 4.3.5 inclusive that the extensions do not meet the requirements of the Building Code. The Claimant in his evidence also referred to a paragraph in the 'Application by Fourth Respondent for order striking out' dated 10 February 2005 at paragraph 4 "*deplorable combination of poor design, poor construction and shoddy workmanship*". The Claimant submitted that it was his intention to establish that the First Respondent had a duty to the Claimant to meet the building code as applying to habitable spaces and weathertightness and by his standard of workmanship and by omission the First Respondent had failed to do so, thus he had breached that duty and the cause of action for the claim was the tort of negligence.

3.6 The First respondent. Mr Greg Hart, responded to the adjudication claim with a letter dated 6 August 2004. The letter stated:

re Claim No.01083 – 14 Quigley Street, Newlands Street, Wellington

In reviewing the report and the claims made, we believe the following facts have been overlooked by both the claimant and the writer of the report.

- The rumpus room including all walls and linings, and all excavation and digging out was done by previous owner(s), probably some 20 years ago.

- The exterior wall of the bedroom including exterior linings, concrete floor etc.,

was part of the original house construction of 30 years ago.

- All exterior backfilling and exterior planting etc, was done by the previous owner(s), except for planting carried out by the claimant.*
- Approved Building Certifiers Ltd was used as building consultants and for certifying of all works. All construction work was carried out at their direction and to their approval.*
- The house Sale & Purchase Agreement required that all works requiring a building consent, that a code compliance certificate is issued. This was fully met.*

If the claimant still believes that he has a claim regarding this property, it would be against Approved Building Certifiers Ltd, and mediation should be direct with them, without our involvement. Therefore we see no requirement for us to be involved in mediation.

Yours faithfully

G N Hart

- 3.7 This letter was sent on many occasions as the response from Mr Hart. Mr Hart was kept fully informed of all of the interlocutory proceedings and the position with Approved Building Certifiers. Mr Hart was made aware of the claim against him in the Claimants 'better particulars' dated 9/6/05.
- 3.8 The statements at the first three points of Mr Hart's letter appear to be in conflict with the consent application documentation and with the Assessor's report. This aspect became clear when I inspected the property.
- 3.9 The plan of the original house that is in the assessor's report shows at the lower level a sub-floor area designated as Work Shop and the north and south walls of the Work Shop are the foundation walls for the main floor and the west wall is a full height exterior wall. West of the Work Shop is another bay under the main floor and this is designated as Car Port and it is completely open at the north and south ends and at the west side there are four columns with cross bracing

supporting the main floor above. The east wall is the same wall that is the west wall of the Work Shop area

The Lower Floor Plan that was submitted for the building consent for the alterations and additions show the Rumpus Room at the previous Workshop area and show full walls at all sides. The plan is noted at the east wall "*extg wall re-instated on conc nib*" and the floor is noted as "*extg conc. Floor to be taken up. Relaid over DPC*". The area where a Car Port was shown on the original plans is the area where Bedroom 4, bathroom and Entrance are and that bay is noted as "*Ext Garage*".

At the site inspection the construction was shown to be somewhat different and it was obvious that there had been alterations from the original plan that had been carried out before the alterations and extensions that are the subject of this claim. The Rumpus Room north and south walls were false timber framed walls built inside the existing foundation walls with a gap between the false walls and the concrete foundations and the excavated face of the ground under the foundation walls. The gap was big enough for access and the drains had been laid in these gaps. The east wall of the Rumpus Room was obviously constructed at the same time as the north and south false walls and was constructed around the old piles that were part of the sub floor framing and there was no concrete nib under that wall. The west side of the Car Port was no longer columns and braces but was a fully framed and lined wall and the north side of what had been an open Car Port was a framed and lined wall. The floor of the area that was originally noted as Car Port was now an old concrete floor. The obvious conclusion was that at some earlier time the Car Port had been fully closed in and this explains why the consent drawing note "*Ext Garage*".

As a result of the site visit I was then able to better understand the first two statements in the letter from Mr Hart. It is likely that the Rumpus Room area and the Garage were already there when Mr Hart took over the property.

3.10 I have to review the facts as presented in the evidence to answer the following questions:

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

3.11 The cause of the leaks and the resulting damage are predominantly related (1) the penetration of water to the sub floor area of the original dwelling and the penetration of the moisture from the sub floor area into the new Rumpus Room, or (2) the penetration of moisture into the new Bedroom Four, or (3) the configuration of the Garage/Entranceway levels which allow moisture penetration into the dwelling. I will therefore answer the questions in relation to the same headings as used in the assessor's report

4.0 DOES THE BUILDING LEAK?, CAUSE AND DAMAGE

Rumpus Room

4.1 From the photographs in the Assessor's report, the evidence of Mr Linney and the site inspection I conclude that the area did periodically become flooded. The porous existing foundation walls, the bare earth banks under them, the new retaining wall under the existing foundation wall and the lack of any tanking all allow water to penetrate into the sub-floor area and then into the Rumpus Room Area. Earth has been backfilled against the exterior of the wall without provision for drainage and a garden area established. The moisture tests establish that the area is not weathertight. The area leaked badly and still leaks. The damage as a result of the leaks is listed in preceding Paragraph 3.3. When the area was a Work Shop it may not have been considered a habitable area and may not have given concern to the occupier.

Bedroom Four

- 4.2 Part of the south wall of this area appears to be an existing foundation wall which is porous and not designed to prevent moisture penetration. Earth has been backfilled against the exterior of the wall without provision for drainage. The junction of the upper weatherboard cladding and the lower fibrous cement sheet cladding is such that wind blown moisture can penetrate. The fibrous cement cladding has not been properly installed at joints which allows moisture penetration, and there is inadequate damp proofing of the concrete and fibrous cement walls. The moisture tests establish that there has been considerable moisture penetration to the timber wall framing. The area leaks. The damage as a result of the leaks is listed in preceding Paragraph 3.3.

Garage/Entranceway

- 4.3 The Assessors report and photographs establish that falls and levels of the paved area did not allow for surface water to drain away and water was able to penetrate into the dwelling. The hard ground surfaces are not below the floor level as required by the Building Code and are as little as 20mm or the finished surfaces are above the bottom of the cladding. The building did leak. The damage as a result of the leaks is listed in preceding Paragraph 3.3.

5.0 REMEDIAL WORK AND COST

- 5.1 The Assessor lists in his report the repair work that he considers necessary and I have stated that at paragraph 3.4 above.
- 5.2 Having inspected the work and heard the evidence of the Claimant and the Assessor and considered the Assessor's report I conclude that the repairs as listed are as accurate an assessment as can be determined without more substantial destructive testing which I consider is not warranted.
- 5.3 The Assessor has estimated the cost of the repair work and has listed that at paragraph 5.4 of his report. At the time of the report, 13/06/03, the repair work

was estimated to be \$18,370.00 inclusive of GST, plus the amount of the accounts held by the owners for repairs to date.

- 5.4 The estimated value has not been challenged as the First Respondent Mr Hart has denied liability and has refused to be involved. The Assessor has provided an extensive break-down of his estimated costs and I have examined these and to the best of my knowledge they appear to be reasonable estimates for the remedial work required and I accept them as such.
- 5.5 The plumbing work carried out by the Claimant shortly after purchase is not claimed as part of the repair costs under this claim. The drains around the Rumpus Room walls which involved excavating trenches at north, south and east walls inside existing foundation lines, installing field drains covered in free draining chips, installing a concrete sump and automatic pump in the sub-floor area and running a discharge pipe to outside stormwater drain at back of house has been claimed and the full details are given in an invoice from Pooley Plumbing Ltd dated 9/01/2004. The amount of the invoice is \$1,971.00 inclusive of GST. This item was not included in the Assessor's list of repair work as he was aware it had already been carried out. I accept the amount of \$1,971.00 as part of the repair work.
- 5.6 Attached to the Claimant's particulars of claim dated 9/6/05 was a copy of a quotation from Drainage Control dated 17/4/05 for installation of new stormwater sump and 100mm pvc drain and connection to existing stormwater drain at back of house. The amount of the quote was \$2,070.00 inclusive of GST. This work is part of the remedial work listed by the Assessor at items 5.4.1i) and 5.3.14 of his report to the value of \$5,250.00. I observed the completed work during the site inspection and it conclude it was necessary as part of the remedial work. The amount of \$2,070.00 is a legitimate claim for remedial work and I allow it. However an adjustment is required to the estimate of the Assessor but the amount of \$2,070.00 should not be deducted in its entirety from the \$5,250.00 as the work already carried out includes a sump and a greater length of drain. However the estimate of the Assessor has to be reduced for some concrete

cutting and some length of drain that is included in his estimate and no longer is necessary and I will reduce the Assessor's estimate by \$670.00.

5.7 The Claimant submitted at the hearing that the Adjudicator order the full sum of remedial work as estimated in the Assessor's report to be adjusted for increased costs between 6/03 and 2/06. I advised the Claimant that there had to be some basis for me to consider such a request. After the site Inspection and the lunch adjournment the Claimant tabled calculations based on the Reserve Bank of NZ CPI Inflation Calculator which resulted in a 7.2% change from the end of the second quarter of 2003 (June) and the end of the fourth quarter of 2005 (December). I admitted the document as Exhibit 'C'. The calculations can only be considered as a guide and there are other indices that may be more applicable to the construction industry. I accept the principle that cost escalation is appropriate to allow in the circumstances and I accept that 7.2% is a modest factor for the period from June 2003 to January 2006 and I will apply the factor to the net estimated cost of the remedial work.

5.8 I calculate the cost of the remedial work at:

Estimate as Assessors Report at 13/06/03	18,370.00
Less concrete cutting and drain	<u>670.00</u>
	17,700.00
Update of cost from June 2003	1,274.40
Pooley Plumbing Invoice for Drains, sump And pump	1,971.00
Drainage Control quote for sump and drain	<u>2,070.00</u>
	23,015.40

6.0 LIABILITY

6.1 The First Respondent, Greg Hart

6.1.1 The claim against the First Respondent is a claim in tort for a breach of duty of care to subsequent owners of the dwellinghouse.

- 6.1.2 Mr Hart was the owner/builder of the alterations and additions to the dwellinghouse as shown on the drawings and specifications submitted for the building consent. This was not disputed apart from the extent of the existing work/areas that were completed prior to carrying out the alterations and additions.
- 6.1.3 The subcontractors involved, if there were any, in the building of the house have not been identified and the First Respondent did not seek to join any other parties to the adjudication. As the owner/builder Mr Hart must accept responsibility for the building.
- 6.1.4 The existence of a duty of care has been clearly established in New Zealand by decisions such as in *Chase v De Groot* [1994] 1 NZLR 613. There are other authorities but I accept *Chase v De Groot* as sufficient authority and the facts in this case are sufficiently similar that I conclude that Mr Hart did have a duty of care in tort to the Claimant to take reasonable care to carry out the alterations and additions to the house in accordance with the documentation, the building consent and relevant Acts, regulations, New Zealand Standards and territorial by laws at the time.
- 6.1.5 I am convinced from the evidence that the walls at the north of the Rumpus Room and the south of the Rumpus Room and Bedroom 4 were so poorly constructed and that the east wall and floor of the Rumpus Room were not constructed in accordance with the details on the drawings or in accordance with the regulations that they caused major leaks and Mr Hart breached his duty of care. In addition regardless of the existence of walls at the old Work Shop and forming the Existing Garage Mr Hart had a duty to ensure that the walls enclosing the Rumpus Room and Bedroom 4 as habitable areas were in accordance with the Building Act and regulations, New Zealand Standards and territorial by laws applying to habitable areas which includes weathertightness.

6.2 The First Respondent, Defence

6.2.1 In defence to the allegations of breach of duty Mr Hart denies any liability in his Response to the Adjudication claim on the basis that:

“The rumpus room including all walls and linings, and all excavation and digging out was done by previous owner(s), probably some 20 years ago.

The exterior wall of the bedroom including exterior linings, concrete floor etc., was part of the original house construction of 30 years ago.

All exterior backfilling and exterior planting etc., was done by previous owner(s) except for planting carried out by the claimant.

Approved Building Certifiers Ltd was used as building consultants and for certifying of all works. All construction work was carried out at their direction and to their approval.

The house sale and Purchase Agreement required that all for (sic)works requiring a building consent, that a code compliance certificate is issued. This was fully met.”

6.2.2 Having inspected the property, as previously mentioned what is shown on the consent drawings (but not correctly) as the Rumpus Room area may well have been framed out prior to Mr Hart occupying the premises and the Bedroom 4, bathroom and entrance area may have been closed in as a Garage. This did not absolve Mr Hart from finishing these areas in accordance with the building consent requirements which require compliance with the building code and the various standards and regulations. The evidence clearly shows that the areas were not habitable due to the lack of weathertightness and the construction was so poor that the areas became flooded at times which clearly made them inhabitable. Mr Hart did not carry out the work of relaying the floor with a dpc underneath and he did not form a concrete upstand at the wall abutting

the sub-floor area. Mr Hart made little or no attempt to make the existing exterior walls weathertight. The defence that work was done by previous owners fails as Mr Hart had a duty to upgrade that work to allow for the areas to meet their new functions.

6.2.3 The north and south walls of the Rumpus Room area have backfilled material against them to a level well above the floor level as does the south wall of the Bedroom 4 area and this was probably done by previous owners. The previous uses appeared to be a workshop garage and the water penetration may have been acceptable for such uses. Mr Hart had to ensure that the spaces for their new uses were weathertight and he patently failed to do so. The work as completed by Mr Hart is of a substandard nature as there was no provision for waterproofing or drainage from the existing walls which were not constructed to carry out the function of being waterproof external walls. This defense fails.

6.2.4 From the evidence it is clear that Approved Building Certifiers Ltd were very involved with the alterations and additions to the dwellinghouse. Had they not been deregistered then they may well have been a respondent in the claim. Had they been a respondent then they may well have been found to have some liability as a result of their involvement. They would have been a concurrent tortfeasor with Mr Hart. As Approved Building Certifiers Ltd no longer exists as a company and their involvement has not been part of the proceedings it is not a defence that they may have been at fault.

6.2.5 That a building consent and a code compliance certificate were issued may have had some effect on the sharing of liability but as for the position with Approved Building Certifiers the issuers of the consent and code compliance certificate were not respondents and therefore it is not a defense to the claim that they may have been liable.

7.0 ORDERS

- 7.1 For the reasons set out in this determination, I make the following orders:
- 7.2 Mr Greg Hart, the First Respondent, is ordered to pay to Gillian Elizabeth Linney and Edward Linney, the Claimants, the amount of \$23,015.40 inclusive of GST.
- 7.3 No other orders are made and no orders for costs are made.

This Determination is dated this 7th February 2006.

G D DOUGLAS
Adjudicator

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 takes no step to pay the amount determined by the adjudicator, the determination may be enforced as an order of the District Court including, the recovery from the party ordered to make the payment of the unpaid portion of the amount, and any applicable interest and costs entitlement arising from enforcement.