



SUMMARY

Case: Malik v Auckland Council
File No: TRI-2010-100-000004/DBH 05561
Citation: [2011] NZWHT Auckland 07
Adjudicator: K D Kilgour
Date of Decision: 25 January 2011

Background

The claimants brought a claim regarding their home which they purchased in 2006. They sought full remedial costs from the four remaining respondents to the claim:

- The first respondent: Auckland City Council, the territorial authority.
- The sixth respondent: Jin Bin Qui.

Facts

- October, 2004: Building consent applied for.
- May, 2005 - June, 2006: House built.
- July, 2006: Claimants entered into a purchase agreement for the home, conditional on issue of the Code Compliance Certificate (CCC).
- July, 2006: Council undertook final inspection.
- September, 2006: Code Compliance Certificate issued.
- November, 2006: Claimants became aware of weathertightness issues with deck.

Summary of Decision

Council's Liability

The claimants alleged that the Council had been negligent in carrying out inspections during the building of the home and in issuing a CCC. Council argued that it did not breach its duty of care as the inspection system that was in place was approved by the Department of Building and Housing and is the same as it presently undertakes. However, it was concluded that as the inspection regime did not enable the Council to determine on reasonable grounds that all relevant aspects of the Building Code had been complied with, the Council was found negligent in failing in their duty to detect defects in construction.

(i) Volenti Non Fit Injuria

The Council argued that as the claimants purchased the home knowing of defects to the deck area they should not be able to claim the cost of repairs from the Council. Whilst the claimants became aware of the defects before settlement, it was after the contract became unconditional and as such they were contractually bound to complete the purchase and did not freely incur the risk that the home was defective.

(ii) Contributory Negligence

It was argued that the claimants' actions in failing to make the agreement for sale and purchase conditional upon obtaining a building report and, having obtained advice that the repair work was necessary, failing to obtain advice on the costs of the appropriate repair work prior to settling, removed all causal potency from the Council's original

negligence with its inspection failures. Whilst it was accepted that there may be certain situations where the failure to obtain a pre-purchase inspection is enough for a finding of contributory negligence, the Tribunal held that this was not the case in the present circumstances as the claimants were unaware at the time of negotiating their purchase that there were any weathertightness issues.

Quantum

Repairs

It was concluded that the most appropriate repair option was a full re clad of the home. The Tribunal concluded that \$213,718.09 was a reasonable award for this purpose.

Consequential Damages

Interest was awarded at the rate of 5.19% (the 90 day bill rate of 3.19% at the beginning of the hearing plus 2%) for the period when borrowings were fully uplifted to the date of issues of this determination. This equated to \$6,470.31. Relocation costs of \$2,287.48 and costs of \$1,148.06 paid to Prendos Limited were also accepted. A claim for earlier costs for repairs to an upstairs bedroom costing \$1,216.98 and contract work insurance of \$680.37 was accepted, as was the claim for valuers' fees and a QV valuation report of \$675.00 and \$500 respectively. A claim for rental costs of \$11,700 (18 weeks at \$650) was also accepted.

General Damages

A claim for \$25,000 for general damages was accepted.

Summary of Quantum

The Tribunal held that the following damages are established:

• Claimants' remediation expenditure	\$227,912.68
• Less deductions for owners choice	<u>\$14,194.59</u>
• <i>Sub Total</i>	<u>\$212,718.09</u>
• Rental	\$11,700.00
• Relocation costs	\$2,287.48
• Contract work insurance	\$680.37
• Prendos Limited	\$1,148.06
• Forme Developments Limited	\$1,216.98
• Seagar & Partners Valuation	\$675.00
• QV Valuation- post borrowing	\$500.00
• Interest	\$6,470.31
• General Damages	<u>\$25,000.00</u>
• Total	<u>\$263,396.29</u>

Result

The claimants' claim was proved to the extent of \$263,396.29 and the Auckland Council was ordered to pay the full amount.