

**WEATHERTIGHT HOMES
TRIBUNAL**

CLAIM NO: TRI-2009-101-
000024

[2010] NZWHT Wellington 9

BETWEEN LEE ALEXANDER MORETON,
SHELLEY MARIE MORETON &
KEITH WILLIAM BROWN AS
TRUSTEES OF THE L A & S M
MORETON FAMILY TRUST

Claimant

AND LEFTFIELD CONSTRUCTION
LIMITED (REMOVED)

First Respondent

AND GREG MCLEOD

Second Respondent

AND GM DESIGNS (INC MCMILLAN
CONSULTING LIMITED)

(REMOVED)

Third Respondent

AND MARY GINN & ASSOCIATES
Fourth Respondent

AND INVERCARGILL CITY COUNCIL
Fifth Respondent

AND PLASTER SYSTEMS LIMITED
Sixth Respondent

AND DUANE CRACKNELL
Seventh Respondent

AND CONTRACTORS BONDING
LIMITED
Eighth Respondent

AND MCMILLAN CONSULTING LIMITED
(REMOVED)
Ninth Respondent

AND TYNDALL & HANHAM LIMITED
(REMOVED)
Tenth Respondent

Partial Determination

Dated 29 March 2010

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Conference

1. I convened a conference on this claim on 29 March 2010.
2. Those present were:
 - Roger Pitchforth, Tribunal Member,
 - Paul Bleyenga, Case Manager,
 - Cedric Hurring (on behalf of the claimants),
 - Greg McLeod (second respondent),
 - Sarah Macky (representing the fifth respondent),
 - Roger Eagles (representing the seventh respondent),
 - Rob Coltman (representing the eighth respondent)

Background

3. The parties were part of a mediation conducted on 9 September 2009
4. On 22 October 2009 Mr Chapman for the claimants advised the Tribunal:

I advise that a conditional settlement has been reached in relation to the above matter.

The date settlement is due to become unconditional is expected to be within one month

I will advise the tribunal at the time whether the conditions have been fulfilled and the settlement is unconditional.

5. Two of the respondents, the Invercargill City Council and Contractors Bonding Limited say that from their point of view the relevant clause read:-

The parties shall severally make the payments in full and final settlement of the proceedings and any claim made or that could be made in relation to, or in any way arising directly or indirectly after the proceeding and/or property by the claimants or any other party against a party that has made payment or completed work, and upon the work being completed and/or payment being made by that party, that party shall be fully discharged from any and all liability for the property.

6. The Council and Contractors Bonding Limited both made payments in accordance with the agreement.
7. Both seek to have the claim against them terminated on the grounds that they have complied with the settlement agreement.
8. Mr Hurring for the claimant says that the other parties have not complied with the agreement. Accordingly the agreement with all the parties is at an end.
9. I make no comment on the effect of the mediated agreement on the obligations of the other parties. However, in an agreement which provides for several obligations those obligations can be met and the terms of the agreement satisfied.

Decision

10. The Invercargill City Council and Contractors Bonding Limited, having several obligations under the agreement and having met those obligations by

the payment of the amounts agreed have discharged their liability under this claim.

11. The claim against them is therefore dismissed.

DATED at Wellington this 29th day of March 2010.

A handwritten signature in black ink, reading "Roger Pitchforth". The signature is written in a cursive style with a large, sweeping initial "R".

Roger Pitchforth

Tribunal Member