



SUMMARY

Case: Stanley & Anor as trustees of the Lucy Stanley Family Trust v North Shore City Council

Citation: TRI 2010-100-000026/DBH 05433

Adjudicator: PA McConnell

Date of Decision: 31 March 2011

Background

As trustees of the Lucy Stanley Family Trust, the claimants brought a claim regarding their home which was built by Ms Stanley (one of the trustees) and a Mr Jones in 1998. A number of parties were removed prior to the hearing. The remaining parties were:

- First respondent: North Shore City Council, local authority.
- Second respondents: Mr Banton and Mr White, builders.
- Fourth respondent: Mr McDonald, cladding supplier and installer.
- Sixth respondent, Mr Ward, designer.

Facts

- 1998: Mr Jones and Ms Stanley purchased section and engaged Mr Ward to prepare plans.
- 3 December 1998: Building consent issued.
- 2001: Mr Jones and Ms Stanley separated. Property transferred to sole name of Ms Stanley. Mr Jones gave Ms Stanley a list of work that needed to be completed before the CCC could be issued.
- 2004: Final inspection carried out. Inspector noted 19 items to be addressed before CCC could be issued.
- 6 September 2005: Weathertightness inspection carried out.

Summary of Decision

First respondent, North Shore City Council, the local authority.

The Tribunal held that there was no causative link between any alleged failure on the Council's behalf to advise Ms Stanley of the outcome of the weathertightness report and the loss the trust suffered. As such the claim against the Council was dismissed.

Second respondents, Mr Banton and Mr White, the builders.

Upon hearing all the available evidence and in applying the objective standard of care, it was concluded that the claimants failed to establish that the work of Messrs Banton and White, judged at the time the work was done, was not carried out in accordance with the practices of a reasonably competent builder. As such the claim against Messrs Banton and White was dismissed.

Fourth respondent, Darren McDonald, the cladding supplier and installer.

The Tribunal was satisfied on the evidence presented that Mr McDonald was contracted to supply and install the cladding system, and the poor installation of the system that was causative of leaks. It was accepted that there were defects for which Mr McDonald was not responsible. However, given the extent of the damage caused

by defects for which he is liable the Tribunal concluded that Mr McDonald contributed to defects that necessitate the full reclading of the dwelling. He was accordingly held liable for the full amount of the established claim.

Sixth respondent, Mr Ward, the designer.

The Tribunal accepted that there were certain shortcomings and deficiencies in the plans, but it did not accept that there was a causative link between the deficient work and the claimants' loss. The claim against Mr Ward was therefore dismissed.

Quantum

Repairs

It was accepted that a full reclad was required. The damages awarded for remedial work were reduced by \$44,336 as weatherboards were chosen as a replacement cladding material, as opposed to a like-for-like cladding. The total amount awarded for repairs totalled \$241,602 and was calculated as follows:

- Estimated cost of repairs \$206,843
- Cost of attempted repairs to date \$6,467
- Plans for repair work \$6,550
- Council fees \$6,742
- Supervision of remedial work \$15,000
- **TOTAL** **\$241,602**

Consequential Damages

The claimants also sought loss of rent of \$38,250, costs of alternative accommodation of \$12,000 and moving costs of \$5,545. There was no dispute with any of these claims and as such they were awarded.

General Damages

A claim of \$40,000 general damages was made but the Tribunal did not consider that there were any aggravating factors that required a higher award than \$25,000 for owner occupiers; the standard set in *Byron Avenue*.

Summary of Quantum

The Tribunal held that the following damages are established:

- Remedial work \$241,602
- Loss of rent \$38,250
- Alternative accommodation \$12,000
- Moving costs \$5,545
- Assessor's report \$500
- General damages \$25,000
- **TOTAL** **\$332,897**

Result

The fourth respondent, Mr McDonald was ordered to pay the claimants the sum of \$332,897. The claim against Auckland Council was dismissed, as were the claims against the second and sixth respondents.