

IN THE WEATHERTIGHT HOMES TRIBUNAL

**TRI-2009-100-000086
[2011] NZWHT AUCKLAND 8**

BETWEEN GAIL JEANETTE LA GROUW as
trustee of the G J PEACOCKE
TRUST
Claimant

AND MARK DEAN RANTIN and MRA
ARCHITECTS LIMITED
(Struck off)
First Respondents
(MRA Architects Limited – Removed)

AND DAVID WATSON and ACTUAL
DEFINED DESIGN LIMITED
Second Respondents

AND AUCKLAND COUNCIL (successor to
the Auckland City Council)
Third Respondent

Hearing: 19 October 2010

Closing
submissions
received: 29 October 2010

Appearances: Ms La Grouw, the claimant , self represented
Ms P King, representative for the second respondents, Mr
Watson and Actual Defined Design Limited

Decision: 28 January 2011

**FINAL DETERMINATION
Adjudicator: R M Carter**

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INTRODUCTION

[1] Ms La Grouw's claim against Mr Watson and his company relates to a deck and alterations to the entrance way that Ms La Grouw had built onto her house at 31A Clarendon Road, St Heliers, Auckland.

[2] The house is a two-storey standalone dwelling located down a shared right-of-way. The front or north east elevation runs alongside the right of way, and the entrance way which was altered is half way along this north side. The deck was built onto the far end of the house on this elevation, extending out from the corner, well above ground level. At the back of the deck an external stair leads up onto it.

[3] Ms La Grouw approached Mr Mark Rantin, the first respondent, who is a qualified architect, to draw the plans. Mr Rantin drew a concept plan and obtained resource consent for the alteration and the addition of the deck, but he did not carry on and provide drawings for building consent because of another pressing commitment that arose unexpectedly. He suggested to Mr La Grouw that Mr Watson, who is an architectural designer, undertake this work for her. Mr Watson did so, and the Council issued the building consent on 18 September 2000. Ms La Grouw engaged Mr David Kippen, a builder whom Mr Rantin also recommended, to build the extension to the entrance way and the deck. Mr Kippen carried out the building work beginning in November 2000.

[4] On 28 March 2007 a visiting tradesman walked up to the entrance and a section of the new floor at the entrance collapsed. On 24 May 2007 Ms La Grouw applied to the Department of Building and Housing for an assessor's report. The assessor Mr David Stewart stated in his report dated 18 July 2007 that the entrance alteration

and the deck met the criteria in the WHRS Act 2006 of a 'leaky building'.

[5] Ms La Grouw applied to the Tribunal for adjudication on 21 October 2009. A new assessor, Mr Ron Howarth, further described the state of the alteration to the entrance way and the deck in an addendum report dated 19 March 2010, which Mr Howarth prepared at the Tribunal's request.

[6] Ms La Grouw reached a settlement with the first respondent, Mr Rantin, and the third respondent, the Auckland City Council, at mediation but not with Mr Watson, the second respondent, and so her claim against Mr Watson and his company had to be heard. Ms La Grouw was unable to locate Mr Kippen, the builder, who is believed to be living in Australia and so he was not a party to the proceedings.

[7] Ms La Grouw purchased the house in 1996. In 1999, before Mr Rantin and Mr Watson were engaged to draw plans for the alterations and deck, Prendos Limited carried out an inspection and advised Ms La Grouw that the house was leaky. In August 2000, after Mr Watson was engaged, Prendos provided Ms La Grouw with a report about the house. This report was not provided to Mr Watson.

[8] In her claim in the Tribunal, Ms La Grouw seeks the costs of repairing the deck and entrance way. Ms La Grouw intends to have those repairs carried out at the same time as the remediation of the house as a whole.

[9] Ms La Grouw states that to remedy the entrance way and deck, she will have to spend:

- \$99,616.00 for repairs as estimated in Mr Howarth's addendum report (being repairs to the entry area, the deck, and the lounge walls next to the deck);

- \$5697.57 being an increase in the contingency;
- \$1,000.00 for replacement of tiles;
- \$5,250.00 for Council fees;
- An amount to cover the increase in GST; and
- \$2,946.00 for temporary alternative accommodation while building takes place.

[10] Ms La Grouw also seeks general damages of \$25,000.00. The total amount of Mrs La Grouw's claim against Mr Watson, after deducting \$60,000, being the amount with Council agreed to pay by way of settlement of the claim against it, is \$91,891.78. Ms La Grouw also seeks full costs.

[11] At the adjudication hearing on 19 October 2010, Ms La Grouw, Mr Rantin and Mr Neil Summers, and Mr Watson and Mr Clint Smith gave oral evidence further to their witness statements and briefs of evidence. Following the settlement Mr Rantin gave evidence for the claimant at the Hearing. Mr Summers is a registered architect of long experience who was originally engaged by the Council. He also gave evidence for Ms La Grouw at the Hearing. Mr Smith is a builder, also of long experience, and he is now a registered building surveyor. He gave evidence for Mr Watson at the Hearing. Both Mr Summers and Mr Smith have had experience as WHRS assessors and expert witnesses before the Tribunal. In the circumstances of this case, Mr Smith's evidence was equally valuable because the issues relate to the drawings and their implementation. Mr Summers had undertaken a site visit to ascertain the causes of defects and extent of damage, but Mr Smith did not. The WHRS assessor Mr Howarth also gave helpful evidence.

THE CLAIM AGAINST MR WATSON

[12] In her claim Ms La Grouw alleged that Mr Watson's lack of attention to detail played a significant role in contributing to the cause

of leaks as outlined in the expert statements. In particular she alleged:

- a) Insufficient confirmation of the scope of work at the time of client engagement.
- b) A lack of attention to executing the work in a consistent and timely manner.
- c) A lack of drawings leading to builders having to make their own decisions around suitable flashing details for pergolas and balustrade tops. Both of these areas are known to be at high risk of failure if not properly flashed.
- d) An inappropriate scale of drawings obscuring critical watertight detailing that was material to meeting the client brief.
- e) Incorrectly drawn details.
- f) Insufficient details on drawings, relying too heavily on assumptions by the builder and leading to confusion and wrongful decisions.
- g) Conflicting details between drawings and specifications.
- h) A lack of reference notations to specific manufacturers' technical documents.
- i) A lack of detail in specification to ensure appropriate materials are used, for instance grades of treated timber, and where specific flashing details are sourced.

ISSUES

[13] The issues I have to decide in this adjudication are:

- What are the defects and damage to the entrance way and deck?
- Did Mr Watson breach his duty of care owed to Ms La Grouw in relation to the defects?
- Did any breach of duty cause or contribute to the leaks and damage to the entrance way and deck?

- What is the effect of Ms La Grouw's not advising Mr Watson of the Prendos report?

WHAT ARE THE DEFECTS AND DAMAGE?

Mr Howarth's findings of defects and damage

[14] The defects and damage are set out in the report the first WHRS assessor Mr Stewart prepared which was dated 17 July 2007, and in Mr Howarth's addendum report dated 19 March 2010. In summary Mr Howarth found the following defects:

- There is cracking of the fibre cement cladding on the inside of the entrance parapet wall and the inside of the deck parapet.
- The cladding on the entrance parapet wall and on the support posts for the deck is in contact with and embedded in the paved ground surface.
- The parapet cladding and the main house cladding are in contact with the tiled surface of the deck.
- The parapet walls and pergola beams have flat tops which are clad with textured fibre cement.
- The set down of the deck surface from the floor level is approximately 70mm, yet the plan detail calls for 90mm to the top of the substrate. It is unlikely that 90mm has been achieved.
- The parapet wall junction to the main house wall is a simple butt joint to the original cladding where sealants have failed.
- There is a horizontal joint on the original lounge wall approximately 120mm above the deck level which is filled with sealant which is cracked.
- The roof to the eyebrow over the exterior French doors is loose and can be lifted to reveal rotted ply substrate.

The roof is simply butted to the main wall cladding with a sealant joint at the junction and this joint has failed.

- The feature trellis panels are attached by nails which penetrate the top surface of parapet walls.
- An overflow pipe from the planter box on the deck penetrates the parapet wall cladding and sealants around the pipe have cracked.

[15] Some defects in the deck were evident on two or all three of its sides, being the front, the end and the back of the deck, and there were also defects on the wall of the house to which the deck was attached.

[16] Mr Howarth found damage from the defects was widespread and included staining, obvious decay to timber, failed joints, moisture damage, collapsed framing, rotted roof framing, rotted eyebrow roof substrate and total disintegration at some points. There were fungal and safety issues in relation to the parapet rail which could collapse. Mr Howarth stated that the only option was total reconstruction.

[17] Mr Howarth noted collapsed framing in the modification to the entry landing; staining below the pergola beam junctions with the main house cladding, below the deck edge and the bottom corners of the deck, to the cedar soffit cladding below the eyebrow over the French doors, and from water running from the overflow pipe; the particle board flooring and carpet at the corners of the French doors were moisture damaged; and water dripped from the lining below the deck, the lining itself being decayed in places. At the hearing Mr Howarth described what he found as a 'disaster'.

[18] Mr Howarth also observed that while the original dwelling was not part of this claim, it too had significant problems. These included at various points disintegrating collapsed flooring,

disintegrated ceiling plaster board, delaminating plasterboard and significant cracking of the exterior cladding.

Mr Summers' listing

[19] Mr Summers stated that the cracking, the entry area cladding in contact with wet tiling and external paving, the entry area balustrade and pergola beams with flat tops, the deck balustrades butt-jointed to external walls, un-flashed deck pergola beams junctions with external walls, flat-topped deck balustrades and the fixing of ornamental panels to the deck balustrade, taken together, would have been sufficient to require the additions and deck to be demolished and rebuilt as a result of weathertightness failure. Mr Summers did not take issue with Mr Howarth's findings. Rather he compared the defects with the plans.

[20] To that end, in his brief of evidence, Mr Summers compared Mr Howarth's conclusions as to defects which caused damage with the content of the building consent documentation in a table which formed part of his brief. Mr Summers referred to 17 points where he considered that the drawings were deficient.

[21] Mr Summers related the specific weathertightness detail notes on the drawings to the technical literature to which they refer, and assessed whether they provided the contractor with the level of information required to construct them in a weathertight manner to the standard of the day.

Mr Smith's list of defects

[22] In his brief, Mr Smith responded to Mr Summers with a schedule based on the assessors' reports, listing the defects as failure of the waterproof membrane, failure of the waterproofing in the planter, flat top balustrades, the fixing of the ornamental wood panels, lack of saddle flashings, cracking at sheet joints, grounds

levels, the hood feature over the new French doors, the pergola to main entry, reconstruction of the existing ramp, the entry ramp, and the deck wall junction. In his schedule Mr Smith responded to Mr Summers' allegations that the plans were at fault, and this dispute was centred on this issue rather than the causes of leaks and damage.

[23] In final submissions on behalf of Mr Watson, Ms King and Mr Smith reproduced Mr Summers' schedule with an extra column added to it recording what was discussed at the hearing and demonstrating the respondents' contention that each matter had either been conceded by the claimant's witness Mr Summers, or not conceded by him but answered by the respondent.

Summary of defects causing damage

[24] While there were some differences in emphasis, both Mr Summers and Mr Smith largely accepted Mr Howarth's report. Taking the expert evidence overall, I find the defects which have caused damage were:

- balustrades, parapets and pergolas with flat tops;
- lack of membrane on parapet, balustrade and pergola tops, which were texture coated;
- inadequate joining of the deck parapet walls and pergolas to the main house cladding with no flashings or inadequate flashings of the joints, the parapet wall joints having been filled with sealant that had failed;
- cladding in contact with the ground and deck surface;
- the feature panels attached by nails through the parapet walls of the deck;
- damage from the planter box and overflow pipe;
- cracked cladding;
- inadequate installation of the eyebrow over the French doors leading onto the deck, and

- membrane failure on the deck.

DID MR WATSON BREACH HIS DUTY OF CARE TO MS LA GROUW?

[25] In *North Shore City Council v Body Corporate 188529 & Ors (Sunset Terraces)*,¹ the Court of Appeal upheld Heath J's conclusion that councils, in issuing building consents, and designers, in preparing the plans, are entitled to assume that a reasonable builder would have access to, and rely on, the manufacturer's specifications, and that this documentation did not need to be replicated by the designer in the plans. This is the relevant standard by which Mr Watson's drawings are to be judged.

Scope of work

[26] First, however, I consider Ms La Grouw's allegations that there was insufficient confirmation of the scope of the work at the time of client engagement, and a lack of attention to executing the work in a consistent and timely manner.

[27] Ms La Grouw stated that after she was referred to Mr Watson in 2000 and had an initial chat by telephone, Mr Watson met with her at the house to discuss the requirements of the project. She stated he was given sufficient opportunity 'to confirm the brief' with her. Ms La Grouw stated that she made it quite clear that the existing house was a leaky house and that her need for watertightness was a material requirement. (This is discussed at the end of this decision.) She wanted better watertightness in the deck and entranceway than was the case with the existing building that was disintegrating around her.

¹ (2010] 3 NZLR 486 (CA).

[28] Ms La Grouw submitted that where specific circumstances warrant additional communication to the builder, beyond that accepted by the Council for building consent purposes, failure to provide to do so is a breach of the duty of care. She required drawings to build a deck and entrance extension that would be sufficient for construction. She was not aware of any difference in drawings between those for consent and those for construction. At no stage did Mr Watson make the distinction.

[29] Mr Watson said he was engaged to draw consent drawings and he was not engaged to draw construction drawings. Mr Watson said construction drawings are very detailed so that different tenders can be compared. He said he was introduced in the course of the consent process and drew the consent drawings based on Mr Rantin's concept, as he understood he was engaged to do, and he incorporated the aspects Ms La Grouw required.

[30] When Mr Rantin was still involved he wrote to Ms La Grouw setting out his fees to date and stating that future fees were estimates for building consent, \$1,000.00; Dave Kippen Construction, \$32,062.50; and Mr Rantin's fees 'to prepare working drawings for Council approval and building pricing, including lodgement, \$1,687.50. The amount Mr Rantin quoted was similar to the amount Mr Watson actually charged - \$1,690.43 plus \$43.70 expenses. Mr Rantin concluded the estimates with \$450.00 for the structural engineer to design the deck structure and retaining wall including wall bracing, deck bracing and producer statement design calculations.

[31] Ms La Grouw highlighted that Mr Rantin referred to a fee to prepare working drawings, but that is to ignore the following words 'for Council approval and building pricing, including lodgement'. I do not consider that those words or the circumstances gave rise to a duty on Mr Watson, as the architectural designer introduced to

prepare the consent drawings, to draw Ms La Grouw's attention to the difference between working drawings for consent on the one hand, and construction or detail drawings on the other. Mr Watson took over part of the work from Mr Rantin. Mr Watson knew that his drawings, once they had been added to by the engineer and accepted by the Council, would be used for building but that practice did not impose upon him a duty to warn his client of the distinction. Ms La Grouw was engaging Mr Kippen to provide a complete construction service, not a labour only service. Nor was Mr Watson contracted to supervise the construction, which was included in Mr Kippen's responsibility, and he was not called upon to do so.

[32] Ms La Grouw also argued that Mr Watson's delay in completing the drawings in mid 2000 caused him to be careless and give less attention to the drawings than she was entitled to. Mr Watson acknowledged that he became busy with other work but I accept his evidence that he did not rush the drawings and that he prepared them in his usual manner. Like all the evidence Mr Watson gave, this evidence was careful and credible. Ms La Grouw wrote that because of problems, both with the architect and with getting resource consents and permits, no attempt was made to start the building for another twelve months from the end of 1999. I have concluded that Mr Watson's short delay in mid 2000 in completing the drawings (which then went to the engineer) did not materially affect the project one way or another.

The allegations concerning the drawings

[33] A major thrust thrust of Mrs La Grouw's claim concerns the drawings themselves. These are allegations that the sheets were too small to show the required detail, a lack of detail including flashings for pergolas and balustrade tops, incorrect detail, conflicts between detail in the drawings and specifications, and a lack of reference to specific manufacturers' technical documents including reference to materials to be used.

[34] Mr Watson responded that he was a prudent draftsman and that predominantly he subcontracted to architects, preparing plans for building consent from their designs. He said his duty was to prepare the consent plans and specifications from Mr Rantin's design. Mr Watson wrote that with reference to the general practice of the day, the drawings were prepared with reasonable care and skill. Mr Watson submitted that the damage to the structures was not a result of the plans and specification. He asserted the damage and losses were the result of poor workmanship.

Mr Summers' and Mr Rantin's allegations

[35] Mr Summers noted that the claim related to the addition of the upper level deck and pergola, and the modification of the existing main entry to include new steps, balustrade walls, a pergola, and improved ramp access. The work also included consequential alterations to the existing dwelling and site works.

[36] Mr Summers stated that the plans and specifications were inadequate for the purpose of achieving compliance with the New Zealand Building Code. Mr Summers listed the defects which he stated were of themselves sufficient to require both the entry area and deck to be demolished and rebuilt as a result of weathertightness failure, and he stated that, in respect of each of those defects, the building consent documentation did not provide sufficient information to allow the contractor to construct the work in a weathertight manner. He stated that there were incorrectly drawn details at variance with the referenced technical literature.

[37] Mr Summers noted that the drawings were well set out and provided clear notes and sufficient dimensions to allow the project to be accurately laid out. However they lacked larger scale drawn details of the critical weathertightness junctions and details, and in other respects relied very heavily on references to manufacturer's

technical information, clauses of the New Zealand Building Code, BRANZ documents and New Zealand Standards. Where the critical weathertightness detail is not drawn, in Mr Summers' opinion it cannot be said that a set of building consent drawings met the standard inferred by NZS3604:1999.

[38] Mr Summers stated some of the notes on the drawings referred the contractor to specific details which provided sufficient information for the details to be constructed in a weathertight manner to the standard of the day. However he submitted that other reference documents did not provide the contractor with sufficient information. Therefore in his opinion, the designer was responsible for causing or contributing to each of these defects.

[39] They were the cracking to the fibre cement cladding, entry area cladding in contact with tiling and external paving, entry area balustrading and pergola beams with flat tops, deck balustrades butt jointed to external walls, unflushed deck pergola beam junctions with external walls, flat topped deck balustrades and the fixing of inserted ornamental panels to deck balustrade.

[40] Mr Rantin noted the references to specifications in the James Hardie technical information document. He stated that it is good trade practice to actually document these standard details within the drawings. If this does not occur, the responsibility is on the builder to access or procure these documents and in Mr Rantin's experience, this occasionally does not happen. Mr Rantin stated it would have been prudent for Mr Watson to have attached a copy of the relevant sections and details in the ADD specification from the James Hardie technical specifications. Mr Summers also said that in his experience it was desirable to attach the relevant extract from the specifications.

[41] Mr Rantin and Mr Summers were also critical of the plans being drawn on A3 paper which they said did not provide a

sufficiently clear demonstration of what was required at various points. Mr Rantin alleged that the scale was inappropriate to communicate essential detail, that there were insufficient details as to weathertightness requirements and in the building specification with regard to specific building elements and systems. They were insufficient to show compliance with the provisions of E2/AS1 in the Building Code. He noted however that the deck was built differently from the consent documents in particular with respect to the drainage falls and location of the gutter.

[42] In the schedule of defects attached to Mr Smith's brief of evidence, Mr Smith set out columns headed 'What is Shown on Plans', 'What is Built on Site', 'Comments on Mr Summers' Comments' and 'Conclusion'. Mr Smith responded to Mr Summers' criticisms of the drawings in the order that Mr Summers listed them.

[43] I now address the allegations that the designer caused or contributed to the cause of particular defects, in the order Mr Summers listed them as above, as well as Mr Rantin's other allegations. I record that there were four sheets of drawings, being the site plan in drawing AO1, floor plans in drawing AO2, elevations in drawing AO3 and section A-A in drawing AO4.

Cracking to the fibre cement cladding

[44] Mr Smith stated that if it was alleged that the sheet cracking was due to lack of (vertical) control joints, the deck did not have any walls longer than 5.4 metres, so control joints were not required. He considered that the cracking was more likely to be due to water entering the top of the balustrade walls.

[45] I accept this submission and conclude that the cracking of the cladding was not caused by a defect in the design and drawings.

Entry area cladding in contact with tiling and external paving

[46] Drawing AO2 noted that the new solid balustrade wall at the entrance was to be placed on a 200 series block foundation wall '140 x 200 conc footing 300 into undisturbed ground'.

[47] Mr Smith stated that the plans show the posts that hold up the deck were to be mounted on a minimum of 255mm concrete nib on sheets AO3. He stated that from the assessor's report, it was apparent that the timber was taken into the driveway area and that had allowed damage to the lower edges of the wall framing.

[48] Mr Summers acknowledged in his original brief that in his view, the drawings were sufficiently detailed to have indicated to the contractor that separation was required between the fibre cement cladding and the tiled surface, but this qualification did not extend to the junction between the cladding of the main entry balustrade with the steps and the widened ramp, where no separation was shown on the 1:20 detail on drawing AO4. Mr Smith noted that the plans for the reconstruction of the existing ramp were not followed on site. It did not have the required nib formed.

[49] This allegation, that Mr Watson did not draw a separation between cladding and the steps, indicates a possible breach of duty of care on his part. However, elsewhere in the drawings Mr Watson did make it clear that the cladding had to be separated from the ground, and from the deck surface. Drawings in the James Hardie manual likewise make it clear that there must be a separation between the Haridtex cladding and the ground. In my view the absence of a drawn separation at the steps should be seen in this context for the reasons set out later in this decision. For these reasons I find that this defect is not the result of negligence on Mr Watson's part.

Balustrades, parapets and pergolas drawn with flat tops

[50] Mr Rantin noted that the construction of the deck was at variance with the building consent documents. However sheet AO4 indicated a cross-section through the parapet. He stated that there was no reference to any capping or weatherproofing details. These had not been drawn and there is a reference to 'flash and fix as per James Hardies specification'.

[51] Mr Smith wrote that sheet AO4 shows the balustrade construction and that the plans note that the Harditex Cladding System was to be flashed and fixed as per the Harditex Technical Information. Mr Smith stated that the plans also show a sloping top to the balustrade wall, sloping to both sides, 15 degrees each way.

[52] In fact the balustrade walls were constructed with flat tops and, it appears, no underlying membrane. In giving his evidence Mr Summers remained insistent that the drawing of the balustrade tops with flat tops was incorrect, but Mr Smith stated that the construction with flat tops was at variance with the details on the plans - referring to the 15 degree slope both ways from the centre - and the manufacturer's details in the Harditex technical information, namely the Figure 68 parapet detail, with a fall 1 in 10 to the inside of the building.

[53] There was no specific Harditex detail for balustrade tops as such in the James Hardie publication, but these drawings for the deck parapets specifically referred to the parapet cladding system that was to be used. The Tribunal understands the parapet design in the technical information was sometimes used by designers and builders for the tops of balustrades as well as parapets. The two terms were sometimes used interchangeably, as Mr Smith did when referring to the deck parapets in his evidence.

[54] Mr Watson also adopted the practice of prescribing the James Hardie parapet details in his notes on drawing AO4 for the pergola details. The pergola is also drawn with a flat top, but in the 'Pergola Detail' again Mr Watson referred to the "Harditex Exterior Cladding System; Parapet Flashing to Fig. 68; All Work to Harditex Specification..."

[55] This raises an important point about the parapet, balustrade, and pergola, tops, namely that they were not built with membrane on top of them before being texture coated. It is likely the required membrane was missing in all cases in the as-built construction. Mr Smith indicated that in his view this contributed as much or more to their failure. Figure 68 in the Harditex technical information requires parapets to be covered with two coats of a specified membrane or similar and a fibreglass matting strip is to be placed across the top and 200mm down each side. The final texture coating must be compatible with the membrane.

[56] So while for the pergola over the existing ramp Mr Watson referred to the flashing rather than the slope in his reference 'Parapet Flashing to Fig.68', both the slope and the coverings are clear in the figure itself which he specified.

[57] Responding to Mr Summers, Mr Smith referred to this in his schedule, stating that the drawing referred to Figure 68 and NZS 3604:1999; he noted the membrane was not installed and no saddle flashings were installed in accordance with NZS 3604 (see below) for the deck balustrades or parapets.

[58] The final submissions on behalf of Mr Watson emphasised that the drawings clearly referred to the Harditex requirements for the tops but they were not followed.

[59] In summary, Mr Watson indicated that there was to be a 15 degree slope from the centre and the James Hardie literature required a slope on parapets. Neither was provided by the contractor. In addition the membrane system that James Hardie required was not installed and I accept Mr Smith's view that in this case it probably did not matter how the tops were built – without the membrane they were bound to fail. Having regard to all these factors, I have concluded that in drawing the balustrade and pergola tops flat, Mr Watson was not breach of his duty of care.

Inadequate details where the deck walls were joined to the house with no flashings

[60] Mr Smith stated in his schedule and oral evidence that sheet AO2 requires the use of a saddle flashing to prevent water entering the wall/floor cavity adjoining the joist, with reference to the BRANZ House Guide. (The instruction on the drawing was: "...install saddle flashing to prevent water entering wall/floor cavity".) He demonstrated that had a waterproof membrane been installed to the top of the Harditex balustrade walls, then where these walls adjoined the existing walls of the house, a flashing would have been formed, by turning the membrane up and along the existing wall.

[61] Mr Smith asserted that Mr Summers had conceded that details were contained in NZS 3604 and would not require detailing in the plans. Mr Smith stated that the area was referenced on the plans but the flashings were not installed on site.

[62] The final submissions on Mr Watson's behalf referred to drawing AO4 which stated that at the wall/deck junction, a 150min flashing upstand was to be installed up the existing wall with building paper lapped over, with a direction to refer to the BRANZ House Building Guide and Harditex Technical Information. Instead the

membrane was brought up the front face of the existing cladding, and in their evidence Mr Howarth and Mr Smith criticised this.

[63] I have concluded that given these clear written directions in the drawings, Mr Watson was not in breach of his duty of care in respect of the joining of the deck balustrade walls to the existing house.

Unflushed deck pergola beam junctions with external walls

[64] In the schedule attached to the final submissions, Mr Smith referred to the two pergolas shown on the drawings – one to the main entry and the other to the north-east corner to the deck which joined the external wall of the house at parapet level. He stated that the notes state: “fix to building with galv joist hangar; flash as per BRANZ House Building Guide; Harditex exterior cladding system; Parapet flashing to Fig.68. All work to Harditex specification; NZS 3604:1999 and NZBC.”

[65] Mr Smith recorded Mr Summers’ criticism that the note for “Pergola detail” was not linked to any of the details on the drawing, and the contractor could not have constructed the junctions by reference to the Harditex literature or house building guide.

[66] I have concluded that Mr Watson met the standard of care required by providing the note in paragraph 64 above.

Fixing of ornamental panels to deck balustrade

[67] Drawing AO4 showed a 75x50 cedar frame with cedar slats, packed out 4mm @ each fixing with two M8 copper screws and 18mm round washers to the baluster. The assessor found nails were driven through the frames into and through the balustrade caps. Mr Smith recorded that the contractor on site had not followed the directions on the plans.

[68] Mr Rantin wrote that direct fixing into flat capping is high risk construction and outside the scope of NZS 3604 (1999) and E2 /AS1. He stated that figure 19 for stanchion fixing provided for fixings to a vertical surface only. However Mr Smith submitted, and Mr Rantin appeared to accept, that the details Mr Rantin was referring to in E2/AS1 were details that were not available until the 2005 version and did not apply. I have concluded that the instruction on the drawings was clear and that the drawings met the standard of care required. The instruction was simply not followed, causing damage.

Deck membrane and waterproofing

[69] Referring to the deck threshold detail in sheet AO4, Mr Rantin stated this had been drawn at 1:20 and this was not at a scale that would show the membrane being taken up the vertical face of the house under the sill in accordance with figure 17A E2/AS1. The information needed to be detailed and documented for the builders to read, understand and implement during the construction process. It is critical that this intersection is built in accordance with all the relevant building standards and in strict accordance with the particular manufacturer's and supplier's technical specifications.

[70] Besides his general point that Mr Rantin was referring to a later version of E2/AS1, Mr Smith disagreed with the assertion that waterproofing details were not shown. He stated that the plans required a Jaydex Aquadex Single Layer Acrylic Reinforced Membrane on the deck installed by a registered approved applicator, under the tiles, with a 1.5 degree fall to the outlet. This had failed at the junction near the walls.

[71] The respondents' representatives also referred to and provided James Hardie's June 1998 draft document 'The External Floor and Deck Tiling Systems' which Mr Watson also specifically referred to on drawing AO4. This document covered sheet layout, framing and fixing requirements, sheet preparation and waterproofing

including floor waterproofing, horizontal and vertical corners, and wall cladding to tile deck flashing. Because of that reference and the document's detailed contents, and for the reasons in the preceding paragraph, I reject the allegation that the drawings were deficient in respect of the deck waterproofing and upstand, and I conclude that the instructions were adequate by the standards of the time.

[72] For the reasons I have given in each case, I do not find that Mr Watson was in breach of his duty of care in preparing his drawings in respect of the above defects.

The other defects

[73] The experts agreed the hood over French doors was not on the plans and that the way the hood was attached to the wall by sealant was wholly inadequate and had failed.

[74] There was also damage from overflow pipe from the planter on the deck. The last part of the designer's note referred to the outlet:

Jaydex lined waterproof planter use approved applicator formed by deck balustrade setdown. Wrap entire garden in Terram 100 geotextile fabric with tape sealed edges 150mm scoria drainage material cover with additional layer of geotextile fabric with edges turned up and tape sealed. Cover with lightweight soil mix install 100/0 metabronze or similar approved planterbox outlet with perforated drainage coil and standpipe inspection point connect to T/A approved stormwater system.

[75] The assessor Mr Howarth recorded that the pipe did not accord with the plans and was causing damage. I also note that the assessor Mr Howarth found the deck set down was less than required in the drawings. Therefore there is no causative link between the set down in the drawings and what was specified in the plans - the set down was less than required so the drawings cannot be said to be causative of damage. The difference in the drainage

falls as constructed from the drawings is another workmanship issue and not the fault of the designer.

Plans drawn on A3 paper

[76] Mr Rantin criticised Mr Watson for drawing the plans on A3 paper so that the scale was inadequate to show essential detail. I accept that plans were usually drawn on larger paper and that the size of the paper made it necessary to read the plans carefully to see the details that were provided in the drawings and to read the written notations which were important. However of itself the use of larger paper would not have provided more in the way of drawn details, where they are absent. While the drawings were not perfect, and needed to be read carefully, below I conclude that they met the standard required of drawings of this kind.

Conclusion

[77] Mr Summers stated that it is entirely correct for Mr Watson to say that poor workmanship had resulted in damage to the dwelling and that there has been a lack of attention to the manufacturer's technical information, particularly in the case of cladding. However, Mr Summers asserted that the balustrades and the entry pergola had all been installed flat, in addition to the timber balustrade panels having been top fixed through the fibre cement balustrade, and that this work has been constructed entirely in accordance with the drawings, notwithstanding the various location references to technical literature.

[78] In my view Mr Summers' approach is at variance with the High Court's judgment, which has been confirmed by the Court of Appeal in *Sunset Terraces*. Heath J held that designers are *entitled* to assume that a reasonable builder would have access to and rely on the manufacturers' specifications, and that this documentation did not need to be replicated by the designer in his plans. The key

technical document in this case (as in many others) was the 1998 James Hardie Harditex Technical Information Manual.

[79] There are multiple references to that information in the drawings. Mr Watson referred to 'Harditex Cladding' on the floor plans drawing AO2, and he referred to figure 68 for the parapet top. The next drawing for the elevations referred, for the north east elevation, to the 'Existing Residence Harditex Cladding System' and 'New Deck & Balustrade to NZBC Clad in Harditex to Match Residence'.

[80] There is also reference for the south east elevation to 'New Harditex Coated Polystyrene Moulding Fix to Harditex, Provide Flashings to NZBC B2' and to the 'Harditex Cladding System Galv Steel Posts Colour Match to Hose MIN 225 Coc Nib'. For the north-west entry, there is reference to 'New Haditex (sic) Clad Pergola'.

[81] On the Section A-A drawings AO4, Mr Watson referred to the 'Parapet Cladding System', 'Harditex Cladding System Flash and Fix as per Harditex Information Manual', to the 'Existing 6mm Harditex Cladding', to 'New Harditex Coated Polystyrene Moulding Fix to Harditex All Work to Provide Flashings to NZBC B2', and 'Flash Window as per Harditex Technical Information'.

[82] There is also 'Overhang and Clearances Refer "Harditex Technical Information" '. There is a reference 'Wall Deck Junction 150 min Flashing Upstand Up Existing Wall With Building Paper Lapped Over Refer BRANZ House Building Guide & 'Hardtex Technial Information' and, regarding the pergola detail, '... Flash as per BRANZ House Building Guide Harditex Exterior Cladding System Parapet Flashing to Fig. 68 All Work to Harditex Specification, to NZS 3604:1999 and NZBC'.

[83] The general notes stated that all construction was to be to NZBC & approved documents including NZS 3604:1999, BRANZ House Building Guide & NZS4210, 3109, 3402.

[84] Mr Summers observed that the drawings were noted as having been drawn for the purpose of obtaining building consent and were not full construction drawings, and assume that the building contractor was conversant with the NZ Building Code and relevant standards. Mr Summers said the note was intended to transfer liability for any omissions or errors with the designer to the contractor and that was unreasonable. In my view that statement demonstrates a misunderstanding of the legal test set out by Heath J in *Sunset Terraces* as well as implying a careless or even cynical approach on Mr Watson's part that is at variance with Mr Watson's honest demeanour at the hearing.

[85] In *Sunset Terraces*, Heath J addressed the question of the difference between design and construction details and sated that the question will always be one of fact and degree. He stated that the difficulty lies in the application of the law to particular facts and the need to determine whether any errors on the part of the designer were causative of loss to the claimants.

[86] In addressing those issues, his Honour described the differences between architects, architectural designers and draftspersons. He listed the absence of details in that case, and described the plans as skeletal in nature and was critical of the specifications. Despite the inherent faults Heath J concluded, for the same reasons he gave in respect of the Council's obligations in relation to granting building consents, that the dwellings could have been constructed in accordance with the Building Code from the plans and specifications. That would have required builders to refer to known plans and specifications. He held that to be an appropriate assumption for Council officers to make and that the same tolerance

ought also be given to the designer. In other respects the deficiencies in the plans were not so fundamental in relation to either of the two material causes of damage that any of them could have caused the serious loss that resulted to the owners. He held that the designer did owe a duty of care to the owners beyond his contractual obligations but found no material losses were caused by any alleged deficiency.

[87] Having regard to those principles and findings, I have concluded that the Mr Rantin and Mr Summers have applied a standard to these drawings higher than the duty of care set by the Court and that Mr Watson met that standard. In reaching that decision, I do not imply that the drawings Mr Watson prepared were lacking in drawn detail or references in the way that the drawings in *Sunset Terraces* apparently were. Heath J stated that the drawings in that case did not contain references to detail that a builder or tradesperson may need to get from manufacturer's specifications. A careful recording of the content of the drawings, which Mr Smith undertook on Mr Watson's behalf, shows that most if not all of the aspects Mr Summers was concerned about because of lack of drawn detail was covered in appropriate references to those specifications.

[88] While Mr Rantin and Mr Summers as architects believe that the relevant extracts from the manufacturer's specifications should have been provided, the legal test is that the designer is not required to provide them. I have examined the drawings and considered the submissions and schedules in detail and for the reasons I have set out including my reason in respect of each particular allegation, I have concluded that they show that Mr Watson met the legal test, namely that the deck and entrance way could have been constructed in accordance with the Building Code from his drawings.

DID ANY BREACH OF DUTY CAUSE OR CONTRIBUTE TO THE LEAKS AND DAMAGE TO THE ENTRANCE WAY AND DECK?

[89] I am satisfied that a competent builder who referred to the drawings and specifications, the James Hardie manual and the NZ Standard 3604 could have constructed the house in a weathertight manner. In the circumstances of this case it would have been reasonable for the builder to go back to the designer if he had any questions but he did not do so.

WHAT IS THE EFFECT OF MS LA GROUW NOT ADVISING MR WATSON OF THE PRENDOS REPORT?

[90] Ms La Grouw stated that in August 2000 a full investigation on the leaking of her house was carried out by Mr O'Sullivan from Prendos Limited and it was only at this stage that she realised the full extent of the damage and decay due to leaking.

[91] In September 2000 she arranged for Mr Kippin to collect the set of plans from Mr Watson to price the proposed building work, which started around early mid-November 2000. Ms La Grouw had problems with the builder Mr Kippin and in March 2001 the job was still not complete. Within only a few months she started to have leakage problems under the deck and in September 2001 Mr Kippin attempted to fix a water leak from a wall. She was left with the job unfinished and no Code Compliance Certificate. Mr Kippin had left for Australia.

[92] Mr Watson stated in his evidence that he was not made aware that the house was leaky and that if he had been provided with the Prendos report, he would have deferred to the experts, Prendos. He said he would have stopped the project and consulted those experts and then brought his plans into line with their understanding of leaky buildings in 2000. Mr Watson stated that if he had been

provided with the Prendos report that detailed a cavity in H3 framing, that would have been the best outcome for this building. Mr Watson stated that he was completely dumbfounded to find out later that he was not informed the house was leaky and he stated that is the crux of the matter.

[93] Mr Watson stated that Ms La Grouw knew that Prendos were the experts and they could have provided her with information and technical personnel to help her to construct the deck with what they knew and what was in their report. Ms La Grouw stated that she did not need to do anything because as far as Prendos and the builder were concerned, there was no concern about the parts of the house that she was building the deck and entrance on to. Mr Watson argued that until the cladding at that end of the house was removed, it could not be known exactly what the condition of the underlying framing was, and Mr Smith pointed to a part of the Prendos report that indicated that that wall needed to be re-clad.

[94] I accept Mr Watson's recollection that he was not told the house was leaky because I formed the clear impression that Mr Watson's evidence was accurate and that he was not dissembling in any way. In my view Ms La Grouw is mistaken in her recollection that she told Mr Watson that the house was leaky. Mr Watson took over from Mr Rantin, and in fact charged close to what Mr Rantin quoted for the consent drawings.

[95] I do not accept the allegation that Mr Watson was under a special obligation at the outset, as Ms La Greuw asserted he was, because he was not aware the house was leaky. In my view Ms La Grouw's failure to pass the Prendos report on to Mr Watson after she obtained it in August 2000 was a serious omission on Ms La Grouw's part. At that stage the drawings were still being processed by the engineer and had yet to be lodged for building consent in September. I am inclined to the view that Ms La Grouw's failure to give Mr Watson the Prendos report was an act of contributory negligence on

her part which would need to be taken into account if a finding of negligence had been made against him.

CONCLUSION

[96] In summary, I have concluded that Ms La Grouw's claim against Mr Watson must fail. The drawings were sufficient to enable a reasonably competent builder to construct the deck and alterations to the entrance way in Code compliant manner.

[97] In Procedural Order No. 9 dated 15 October 2010, I accepted that Ms La Grouw's claims against Mr Rantin and the Auckland Council were withdrawn following the settlement of them. However, I stated that if Ms La Grouw's claim against Mr Watson was successful, he could bring claims for contribution against Mr Rantin and the Council. As Ms La Grouw's claim against Mr Watson and his company is unsuccessful, that possibility does not arise, and so these adjudication proceedings are at an end.

Dated this 28th day of January 2011

R M Carter

Tribunal Member