

IN THE WEATHERTIGHT HOMES TRIBUNAL

**TRI 2010-100-40
[2011] NZWHT AUCKLAND 61**

BETWEEN SUSAN LESLIE PEARSON & GRAY
EARNEST PEARSON, THE
EXECUTORS OF THE ESTATE OF
THE LATE BETTY TURNER
Claimant

AND AUCKLAND COUNCIL
First Respondent

AND HUGHES & TUKE CONSTRUCTION
LTD
Second Respondent

AND DAVID CHARLES TUKE
Third Respondent

AND DAVID B MCGLASHAN
Fourth Respondent

AND RRL GROUP LIMITED
Fifth Respondent

AND BARRY RUSSELL BROWN
(Undischarged Bankrupt)
Sixth Respondent

AND ALUMINIUM CITY (PENROSE)
LIMITED (in Liquidation)
Seventh Respondent

AND SCOTT MARSHALL
(Removed)
Eighth Respondent

AND FROGLEY PLUMBING SERVICES
LIMITED
Ninth Respondent

AND STEPHEN JOHN FROGLEY
Tenth Respondent

AND VERO INSURANCE NEW ZEALAND
LIMITED
Eleventh Respondent

Hearing: 11-15 July 2011

Closing Written
Submissions: 20 July 2011

Closing Oral
Submissions: 22 July 2011

Closing Written
Submissions on
Quantum solely: 9 September 2011

Extended
Hearing of Oral
Submissions on
Quantum solely: 13 September 2011

Appearances: Mr P Langlois and Mr R Potter for the claimants
Mr P Robertson for the first respondent
Mr D Wilson for the second and third respondents
Mr G Kohler for the fourth respondent
Mr S J Frogley, the tenth respondent – self represented
Ms T Wood and Ms Tompkins for the eleventh respondent

Decision: 9 November 2011

FINAL DETERMINATION
Adjudicator: K D Kilgour

[1] The claimant's claim succeeds to the extent of \$202,045.00 for the reasons set down in the attached "Reasons for Final Determination" and otherwise calculated on the basis of the column headed "J White" in Annexure 2, which can be summarised as follows:

Remedial costs claimed total	\$164,492.00
Consequential costs claimed	\$12,445.00
Interest	\$18,108.00
Subtotal	\$195,045.00
General damages	\$7,000.00
TOTAL claimed	\$202,045.00

[2] The claim by the executors of the estate of the late Betty Patricia Turner, Susan Lesley Pearson and Gray Earnest Pearson is proven to the extent of \$202,045.00. I order:

1. The Auckland Council is to pay to Susan Lesley Pearson and Gray Earnest Pearson the sum of \$202,045.00 forthwith. The Auckland Council is entitled to recover a contribution from Hughes and Tuke Construction Limited of up to \$161,636.00 for any amount paid in excess of \$40,409.00.
2. Hughes & Tuke Construction Limited is ordered to pay to Susan Leslie Pearson and Gray Earnest Pearson the sum of \$202,045.00 forthwith. Hughes & Tuke Construction Limited is entitled to recover a contribution of up to \$40,409.00 from the Auckland Council for any amount paid in excess of \$161,636.00.

[3] If the two respondents, Auckland Council and Hughes & Tuke Construction Limited meet their obligations under this determination, this will result in the following payments being made to Susan Lesley Pearson and Gray Ernest Pearson as Executors of the estate of the late Betty Patricia Turner:

- i. Auckland Council, the first respondent - \$40,409.00.
- ii. Hughes & Tuke Construction Limited, the second respondent - \$161,636.00.

[4] If either of the parties listed above fail to pay its apportionment, this determination may be enforced against any one of them up to the total amount they are ordered to pay in paragraph [2] above.

DATED this 9th day of November 2011

K D Kilgour
Tribunal Member