

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

**VCAT Reference: D808/2004**

[2005] VCAT 1704

**APPLICANT:** Noreen Cahill  
**RESPONDENT:** Vero Insurance Limited  
**WHERE HELD:** Melbourne  
**BEFORE:** Senior Member M. Lothian  
**HEARING TYPE:** Hearing  
**DATE OF HEARING:** 15 August 2005  
**DATE OF ORDER:** 15 August 2005

**ORDER**

1. The Respondent must pay the Applicant \$7,000 forthwith.
2. No order as to costs.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

For the Applicant: Ms N Cahill, in person  
For the Respondent: Mr J Nixon of Counsel

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## REASONS

1. This is an application by the Applicant to be paid \$7,000 pursuant to my orders of 22 March 2005.
2. Order 1 of 22 March 2005 required the Respondent to elect whether to pay the Applicant \$7,000 or undertake repairs by 1 April 2005. Time for election was extended to 14 April 2005 on 30 March 2005. It is accepted that the Respondent elected to do so on 12 April 2005. The repairs were to be undertaken by the original flooring sub-contractor, Completely Floored.
3. In the event of election to undertake the work, it was to be completed, or another completion date agreed, within 6 weeks of the date of the order which was by 3 May 2005. This period was not extended by the order of 30 March 2005, but if a further 14 days is added, the work should have been arranged or done by 17 May 2005. I accept the unopposed evidence of the Applicant that she did not hear from Completely Floored at all until 24 May 2005 which was some time after she had spoken to Ms Williams of the Respondent.
4. I do not accept the evidence of Mr Ellison of Completely Floored that he made a number of attempts to contact her by telephone. His evidence was contradictory and entirely unconvincing.
5. It therefore follows that the Respondent has breached order 4 of 22 March 2005.
6. The consequence of the breach is to necessitate an appropriate order. On 22 March I found that it would be reasonable to rectify the floor, rather than replace it.

7. Although the quotation of 4 April 2005 for \$2,500 provided by Completely Floored to the Respondent might be influenced by the currency of this dispute, it is accepted that the cost to rectify is less than \$7,000. I also refer to paragraph 9 of my reasons of 22 March 2004 "...only Completely Floored is qualified to lift and re-glue the boards...".
8. I find that it is no longer reasonable to expect the Applicant to deal with Completely Floored. There is no evidence that Completely Floored has made a real attempt to contact her or rectify her floor and it has treated her neither fairly nor reasonably both before and since the order of 22 March 2005. The Applicant is therefore left with no option but to replace the floor.
8. \$7,000 is a reasonable sum to replace the floor.
9. The Respondent must pay the Applicant \$7,000 forthwith.

**SENIOR MEMBER M LOTHIAN**