

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D555/2008

CATCHWORDS

Domestic Building, *Domestic Building Contracts Act 1995* warranties under s8 and rights of subsequent owners under s9, builder's obligations to the contracting party, renovation, highly reactive soil, foundation movement, responsibility for checking earlier re-stumping by others, responsibility of the builder with respect to engineer's obligations, founding depth, timber floor shrinkage and acclimatising timber where it will be laid.

APPLICANT	Daniel Patrick Dowling
SECOND APPLICANT	Alana Joy Acton
RESPONDENT	Stuart Laurie
WHERE HELD	Melbourne
BEFORE	Senior Member M. Lothian
HEARING TYPE	Hearing
DATE OF HEARING	27 April 2009
DATE OF INTERIM ORDERS	24 June 2009
CITATION	Dowling & Anor v Laurie (Domestic Building) [2009] VCAT 1026

INTERIM ORDERS

- 1 I find that the Respondent is liable to the Applicants for:
 - (a) Rectification of the strip flooring to the upper level, and must pay them \$7,000.00 for this item;
 - (b) The roof leak and must pay them \$368.00 for this item; and
 - (c) The deficiencies of the pad footings constructed by the Respondent, which has not yet been quantified.
- 2 The Respondent must pay the Applicants \$7,368.00 forthwith for orders 1(a) and (b).
- 3 I find that the Respondent is not liable for the lack of agricultural drains and deficiencies of and arising out of the restumping and/or relocking undertaken by the firm Professional Restumping about which more is said in the reasons that follow.

- 4 **The Proceeding is referred to directions before Senior Member Lothian on 8 July 2009 at 9:30 a.m. at 55 King Street Melbourne** to consider the further conduct of the proceeding in circumstances where the costing provided by the expert witnesses does not distinguish between the consequences of the defective re-stumping and the consequences of the inadequate pad footings, either as to the cost of rectification or the consequent costs (if any) of moving and storing furniture and accommodation.
- 5 Costs and interest are reserved.

SENIOR MEMBER M. LOTHIAN

APPEARANCES:

For Applicants

Mr K. Oliver of Counsel

Witnesses:

Mr D. Dowling

Mr T. Cassamento, Engineer

Mr R. Lees, Building consultant

Mr C. Alkamade, Geotechnical engineer

For Respondent

Mr S. Laurie in person

Witnesses:

Mr J. Atchison, Engineer

Mr R. Hegarty

REASONS

- 1 The soil in much of Williamstown is notoriously reactive, and so it is at the home of the applicant Owners, Mr Dowling and Ms Acton. They bought their home in Pasco Street in June 2005 and took possession on 5 October that year. The respondent Builder had undertaken renovation and extension building work for the previous owner, Ms Cutriss-Beech under a contract dated 4 November 2003. The work consisted of the addition of a two-storey extension at the rear of the home and renovation and extension to the ground floor. An occupancy permit was issued on 11 March 2005.
- 2 There is no doubt that the home has suffered damage due mainly to movement. There are cracks in walls and ceilings, the floor is substantially out of level in some areas and some doors and windows have moved so that they are difficult to open or close. In addition, the upstairs timber floor appears to have shrunk – there are cracks between some of the boards that all the experts agree makes it defective. There is also a minor roof leak. The question is whether the Builder is liable for some or all of this damage.
- 3 The Owners claim against the Builder under sections 8 and 9 of the *Domestic Building Contracts Act 1995* (“DBC Act”). Section 8 provides statutory warranties as part of the building contract between the Builder and Ms Cutriss-Beech. Section 9 extends the benefit of the warranties to subsequent owners, so enables the Owners to take proceedings for their breach.
- 4 The Owners must prove that the faults arise out of defective work by the Builder, or are faults for which the Builder was responsible. Proving what was, or was not the Builder’s responsibility to Ms Cutriss-Beech has been made more difficult because the Builder said he lost his copy of the contract. He said under cross-examination that he moved house (and office) about four years ago and thinks he might have lost the contract then.
- 5 The Owners’ claim is described in their particulars of loss and damage of 3 April 2009. It is a total of \$251,577.55, being rectification costs of \$233,068.55 quoted by Longbow Constructions (Mr Lees, their expert building consultant, assessed damages at \$192,559.00) \$5,309.00 for storage costs, and \$13,200.00 for accommodation during rectification works, plus interest and costs. In contrast, the Builder’s expert consulting engineer, Mr Atchison expressed the opinion that the Builder is not liable to the Owners at all, but if he is, the cost of rectification of the timber flooring to the first floor and the extension footings is \$7,979.00.
- 6 The Owners’ claim is for alleged:
 - i Failure to inspect and provide restumping/reblocking contrary to note on drawing S2,
 - ii Insufficient depth to new pad footings,
 - iii Floorboards to upper level laid with excessive moisture content, and

- iv Steel post not properly bolted to concrete pad footing.
- 7 Mr Dowling said in his witness statement that he and Ms Acton first noticed cracking in the hallway walls about three months after they moved in. Since then there have been problems with a section of roof tiles that has allowed water to penetrate the home, cupping of the kitchen floor near the sink for which the Owners have been compensated by their household insurer, the floor of the study has dropped, the study window would not close, the front door has dropped onto the tread, the timber floor upstairs has gaps and there is a crack in the plaster under the upstairs window.
- 8 I have been assisted by the evidence of Mr Alkamade (geo-technical engineer), Mr Casamento (engineer), Mr Lees (building consultant) and Mr Atchison (engineer) who all gave expert evidence. Mr Atchison was engaged by the Builder and the others by the Owners. Mr Alkamade was also a witness as to fact as he undertook the foundation investigations and made footing recommendations addressed to Mr Spenser Beech on 10 October 2003. Mr Beech was identified as the husband of Ms Cutriss-Beech and the Builder said under cross-examination that he had done four or five projects for Mr Beech.

ADEQUACY OF FOOTINGS AND FOUNDATIONS

- 9 There is movement in the new structure, but is it because the Builder has failed to build in accordance with the design and good building practice, as the Owners assert, or because the design is insufficient to overcome the problems inherent in highly reactive soil?
- 10 As Mr Casamento said at paragraph 8.1 of his report of 12 August 2008:
- There is ample evidence to suggest that the old home had experienced substantial movement over many years prior to the extension and renovations taking place in 2003/04.
- 11 Mr Casamento also recommended at 9.4 that agricultural drains should be installed across the front and rear of the site as part of the rectification “to prevent surface water and sub-surface water permeating through to the stumps”. This was not included in Mr Alkamade’s recommendations of 10 October 2003, the Owners have not drawn my attention to an obligation of the Builder to do so on the engineering or architectural drawings and I have been unable to discover any reference to it in my own investigations. Not only do I not allow the Owners any sum for installation of agricultural drains, I note that Mr Casamento’s suggestion that these drains might be necessary once the footings have been rectified lends support to Mr Atchison’s views, below.
- 12 Mr Atchison said at page 11 of his report of 7 November 2008:
- The building has been designed with three separate support mechanisms namely concrete slab, isolated pad footings and stump footings, that expose the building to considerable differential movement as described in AS 2870. The suggestion by Foundation Exploration [Mr Alkamade’s firm] that the building would have

suffered minimal damage is contradicted by the advice of the code. Expected movements in a Class H heavy clay soil condition are within the range observed at this property.

Alleged failure to inspect and provide restumping/reblocking

13 The Owners complain of dropping, uneven floors and of cracks to the walls and ceilings of both the new work undertaken by the Builder and also the existing building. According to the Builder, Mr Beech arranged for the existing building to be restumped by a firm called Professional Restumping and inspected by building surveyor Nicholas Wright before the Builder commenced work. The Builder also said that he inspected and passed the reblocking before he commenced his work, although his evidence on this point was somewhat inconsistent. Of great concern was his admission, under cross-examination, that Mr Beech had paid \$6,000.00 for re-stumping and he was not going to tell him to re-do it.

14 Professional Restumping worked on approximately 90 stumps. A further 15 or so were installed by the Builder at the north end of the kitchen/family room in the area to which the note “Conventional floor framing” applies on engineering drawing S2.

15 I accept the uncontradicted evidence of Mr Casamento that there are many of Professional Restumping’s stumps that have settled and rotated, that the packing on top of some of the stumps is sub-standard and that there are gaps between the floor joists and bearers. I also accept the evidence of Mr Lees that the packing between the stumps and bearers is made of compressible material and does not cover the full width of the stumps. None of this work was the Builder’s physical work. However a note on drawing S2 by the consulting structural and civil engineer, Maurice Farrugia and Associates Pty Ltd is:

Builder to inspect existing sub floor structure and provide restumping/blocking where existing conditions deemed unsatisfactory.

I therefore accept that for at least some of the stumps the Builder’s work, and hence the warranty, included inspecting and further restumping or reblocking where necessary.

16 Mr Casamento said in his report at 8.2:

The re-stumping of the ground floor prior to the extension and renovation was structurally inadequate, and the result of poor workmanship, particularly with the re-blocking.

I do not doubt what Mr Casamento says. The issue is not whether the re-stumping was poorly done, but whether the Builder fulfilled his obligation to inspect properly.

17 If I accept the Owners’ reasoning, it follows that by agreeing to enter a contract with the note on S2, the Builder has given a partial guarantee of all the re-stumper’s work, at least as far as defective work could be discovered

by reasonable inspection at the time the Builder was constructing the floors and walls for the ground floor.

- 18 The Builder gave evidence that he did not have to inspect stumps unless they were “structural” and supported his view with a fax letter to him from Mr Christos Garagounis of Maurice Farrugia and Associates Pty Ltd of 15 December 2008, which is well after this proceeding commenced. The letter stated in part:

I am writing to inform you of the intention of the note provided on our structural documentation for Job No. 03-247 on drawing S2.

...

The intention of this note is to direct the builder to undertake such actions only within the direct area where the actual structural works are being undertaken. It does not apply to areas of the existing structure that are not being affected by the works.

- 19 This letter is of limited value. The obligations the Builder undertook were to Ms Cutriss-Beech, not to the engineers, and Mr Garagounis did not appear to give evidence to support the letter and was not cross-examined on its meaning and provenance. Further, the stumps support the floors laid by the Builder, all of which are now out of level. As Mr Oliver pointed out in his final address, the Ministerial Order of 23 May 2003 with respect to warranty insurance defines “ ‘structural elements’ as ... [including] foundations, floors, walls, roofs, columns and beams.”
- 20 During the hearing both Mr Oliver and I drew the conclusion from photographs such as photographs 17, 18 and 19 in Mr Casamento’s report that some stumps were not directly below the joists that they supported, but this is not what the experts said. Mr Casamento described those stumps as having “settled and rotated”.

Which stumps was the Builder obliged to inspect?

- 21 As Mr Atchison agreed under cross examination, the Builder should have inspected all stumps over which he constructed floors. Further, I find that the note on drawing S2 required the Builder to look at all stumps where he was to carry out work, including the stumps carrying the floors, but did not require him to dig beside them to determine whether they were adequately founded.

Did the Builder inspect the stumps?

- 22 The Builder’s evidence is less than ideal on this point. His own witness statement says nothing about inspecting the stumps and when he was first asked by Mr Oliver in cross-examination what he did to comply with the note on drawing S2 he said he did a visual check – he looked to see if the stumps were supporting what they should support, but he did not ask about the stumps because the floors were “not structural”. He agreed that the stumps are relevant to the performance of the floors and said:

If I had anything to do with the sub-floor I'd make sure it was done properly.

- 23 The Builder admitted that apart from a visual inspection, he had undertaken no checks to ensure that the floor would be level and when asked if it did not matter how the sub-floor was constructed said that the owner (Mr Beech) showed him a certificate from the building surveyor that indicated the holes were at the correct depth.
- 24 In answer to my question the Builder drew a blue line on exhibit A3 showing the areas in which he said he was, and was not, obliged to inspect the stumps. The line runs east-west through the home along the northern wall of the laundry and bathroom and through the middle of the study. Exhibit A3 also has certain walls marked by the Builder in pink which he said he constructed. Some of these were to the south of the blue line and he described them as "non-structural". He said he did a visual inspection of all stumps anyway and he resiled from his blue line in his final address.
- 25 The issue which appears to me to give greatest support to the Owners' submission that the Builder did not properly inspect the stumps is whether the packing had been installed by the time the Builder inspected the stumps. The packing appears to have been inserted to partially ameliorate the effect of rotated stumps; if I were convinced that the packing was in place when the Builder undertook his work, there would be sufficient evidence to alert a reasonably diligent builder to the fact that some of the stumps were unsatisfactory. The packing is shown in Mr Casamento's photographs 20, 21 and 22.
- 26 The Builder said under cross examination that the poor packing was not evident when he was working on the site and he suggested there might have been some re-packing undertaken to minimise squeaks and movement after his work concluded but before the home was put on the market. While it seems unlikely – because there is very little room between the ground and the joists – it is not impossible either. The Owners bear the onus of proving the Builder did not inspect the stumps properly, and I am not willing to assume the packing was in place when the Builder undertook his work.
- 27 As Mr Oliver pointed out in support of the Owners' contention, it was not until cross-examination that the Builder said that he did not see poor packing to any of the stumps. And as Mr Oliver said in his closing address, in the Builder's written response to Mr Casamento's report filed at the Tribunal on 16 April 2009, his only reply to Mr Casamento's comment:
- 6.11.2 Packing to stumps is sub-standard and not in accordance with good building practice. Refer to photos 20 to 24.
- is:
- Refer Professional Restumping Certificate of Final Nicholson Wright, employed by Mr Beech.
- 28 I note that the Builder did not say in any witness statement or statement in reply that the packing was not like that when he was on site. When Mr

Oliver pressed him on this point, the Builder said that he hadn't addressed the re-stumping because it was not his responsibility – it was not done by him. The extent of his checking was to be reasonably sure that the floor would not bounce.

- 29 The packing causes me concern, but it was for the Owners to prove that the packing was in place when the Builder undertook his work, not for the Builder to prove that it was not. Mr Oliver has criticised the Builder for failing to call Mr Beech, the building surveyor for re-stumping and the re-stumper to give evidence, but they could equally have been called by the Owners.

Should the Builder have seen that the stumps needed further work?

- 30 In answer to my question about Mr Casamento's photograph 17, Mr Alkamade said the stumps were probably installed like that, the logical consequence being that the Builder should have noticed that they were defective. The non-sequitur is that if the stumps were already out of place when the Builder inspected them, the floors would not have moved since the Owners bought the property, therefore the Owners would have suffered no loss regarding the ground level strip flooring because they would have bought their home in this state.
- 31 I am not satisfied that the Builder should have seen that the stumps he inspected needed extra work.

Should the Builder have realised that there was inconsistency between the engineer's design and the re-stumper's work?

- 32 Mr Oliver put to the Builder that a floor should not have stumps founded at 1000mm (which concerns the 15 or so stumps installed by the Builder to the north of the kitchen/family room and two stumps referred to as mullions on the north side of the entrance hall) and adjacent stumps founded at only 600mm.
- 33 The evidence that the stumps by the re-stumper were founded at 600 mm is on the Reblocking Application Form completed by the re-stumper and on which the building surveyor, Mr Jim Tsaganas of Nicholson Wright, issued a conditional building permit. "Conditional" has been written in above the stamped "building permit" and exhibit A1 gives no indication of what the condition might have been. The Builder said Mr Beech showed him the certificate from the building surveyor. If the Builder had become aware of this inconsistency he should have brought it to the attention of his clients, but I am not satisfied that he was responsible to second guess the engineers' obligations to properly design the footing system. As Mr Atchison said, "He's a builder, not an engineer."
- 34 Mr Dowling said in his witness statement that he wrote the restumper, "Michael" a letter. When the restumper attended the home Mr Dowling said:

He said that he could not believe what has been built because he was putting in stumps to suit a single storey.

- 35 I accept the uncontradicted evidence of Mr Atchison that the ground floor stumps have no role in supporting the first floor extension. I also accept the evidence of Mr Casamento and Mr Lees that the stumps under the existing part of the house have allowed unacceptable movement in some ground level floors and walls. I accept the evidence of Mr Dowling that the jamming doors and windows were not in that condition when the Owners bought the home.

Stumps - conclusion

- 36 I conclude that the real cause of failure of the stumps at ground floor level was that they were founded too shallow by Professional Restumping and possibly that it is also necessary to install agricultural drains to prevent water affecting the foundations beneath the stumps. I find that this defect was not the responsibility of the Builder and that there is no evidence that he failed to inspect or make enquiries that he should have made.

Alleged insufficient depth to new pad footings

- 37 The Owners say the pad footings under the extension were to be at least 1000 mm deep, whereas the footings installed were only 500 to 750 mm deep. The Builder alleges that many of these footings are 600 to 1000 mm deep and some are founded on rock. The Builder's evidence is supported by a form 14 certificate under the Building Regulations 1994 by Mr Raymond Hegarty. The relevant part of the certificate is:

COMPLIANCE

I certify that the part(s) of the building work described as:

...

Stump holes/pad footings (Date of inspection) 9-12-03

(Comments) Depth of stump holes, pad footings vary approx 6-1000 mm deep. Many founded on rock.

...

Has been inspected by me and complies with the permit documents, BCA and relevant standards.

- 38 A matter of concern is that in the certificate Mr Hegarty did not identify the pad footings that were founded on rock and neither did he state that every pad footing which was founded at less than 1000mm was founded on rock. The Builder called Mr Hegarty to give evidence on the last day of the hearing. In answer to my question Mr Hegarty said that the pad footing holes and stump holes were either 1000 mm deep or founded on rock "otherwise I wouldn't have approved them".
- 39 Under cross examination Mr Hegarty said that he had undertaken about four jobs for Mr Beech in eight years, and that he had probably been on site to inspect for the Form 14 for about 20 minutes. He said that he would have

looked down each of the 30 or so holes (stumps by the Builder plus pad footings), that he does not take notes on site and that he would have issued the certificate either that day or the next. He also said he does seven or eight inspections a day. I am not satisfied that Mr Hegarty recalls the inspection undertaken upon which his certificate is based.

- 40 In his closing submissions Mr Oliver said that the two boreholes reported by Mr Alkamade's firm in 2003 bottomed on clay at 1.3 and 1.5. He said:

That is relevant to the suggestion by the builder that the pad footings constructed by him may have been less than 1000 mm because they struck rock.

These boreholes are not compelling evidence one way or the other, as neither is immediately adjacent to the pad footings. In contrast, Mr Alkamade's third borehole of 18 June 2008 is highly relevant. It is beside pad C1/PF2, shows that the depth of the footing is only 500 mm and bottoms on rock at 1.15 meters.

- 41 Drawing S2 is the ground floor slab/footing plan and none of the pad footings are noted as having dimensions more than 500 mm deep, with the exception of the two PF5s beneath the front of the porch, which were to be 800 mm deep.
- 42 The dimensions of the pad footings are not the same as the founding depth – the depth below the soil surface of the bottom of the pad. On drawing S5 the PF2 pad footing detail (which also applies to PF3, 4 and 5) shows a minimum founding depth of 1000mm.
- 43 In support of his evidence that pad footing C1/PF2 at the south east corner of the study was founded at a depth of only 500mm, Mr Alkamade said he used an augur beside the footing then used a hooked spike to locate the bottom of the footing. Mr Lees' evidence was consistent with Mr Alkamade's.
- 44 At the site inspection of 29 April 2009 the Builder was given the opportunity to demonstrate that the concrete extended more than 500mm below the soil surface. I am not satisfied that he did so, and I am also satisfied that Mr Lees demonstrated that he had located the base of the footing by inserting a screw driver under it horizontally.
- 45 Mr Atchison said in his report of 27 October 2008 he probed the ground to a depth of over 600 mm and there was evidence of further concrete, albeit tapering. He said at page 11 of his report:
- The report by Foundation Exploration [Mr Alkamade's firm] indicating a footing is not founded at 1 meter is not supported by the investigation revealing the footings extend further than 500mm indicated in that report.
- 46 He also said that there were no signs of distress in the en suite bathroom directly above this steel column. Slight but distinct damage was visible at the inspection of 29 April 2009, which was apparently new to all present. Mr Atchison also reported no sign of distortion in a number of other areas.

At the site inspection there was significant distortion at the ceiling junction of the column rising from the pad footing marked C2/PF4 and a beam at the south side of the kitchen/family room, on the east side of the entrance to the hallway, and at approximately C1/PF2 beside the fish pond on the east side of the home. Mr Atchison's photograph 21 shows a modest sized crack at first floor level in the stairwell. That crack is now significantly longer and wider.

- 47 The Builder asked Mr Lees in cross-examination why he did not expose other pads. I accept his answer as reasonable that if holes were dug everywhere, the Owners could not live there. The advantage of the pad exposed was that there is considerable movement obvious in that location and the room where access is gained is small. I accept Mr Lees' evidence that there is movement at other columns that make it likely that the exposed pad is a valid sample and that other pads are also inadequate.
- 48 I conclude that the Builder failed to construct the pad footings in accordance with the engineering design and good building practice and I accept Mr Casamento's evidence that injection of the sub-pad foundations with Uretek is a reasonable rectification method. I also accept his evidence that the upper floor is entirely supported on the pads and therefore their movement has allowed walls to crack and the floor to become unlevel. I note Mr Lees' evidence that the reasonable cost of applying Uretek to all of the seven pads is \$7,920.00, but make no order as to the cost of rectification of the pads until further evidence can be given by the experts.

FLOORBOARDS TO UPPER LEVEL

- 49 All the experts agree that the upper level floor boards are defective. Cracks have opened up between boards which are greater than 3mm wide. I accept the evidence of Mr Atchison that there appears to have been some edge bonding where three or four boards have been stuck together by the floor polish (polyurethane or similar) with the result that the boards which have separated have formed unacceptably wide gaps. The same floor boards have been used on the ground floor and there is no evidence of excessive gapping.
- 50 Mr Dowling said he and Ms Acton first noticed the fault eight or nine months after they moved into the home. This would be in June or July 2006. Mr Casamento said that movement in boards with too much moisture could be expected to be apparent within a year of their laying, to allow for the home experiencing a full year of weather conditions.
- 51 The Builder did not give precise evidence about when the upper level floor was laid, but the work must have been done before the occupancy permit was issued on 11 March 2005. I accept the evidence of Mr Lees, who said the greater the moisture, the quicker shrinkage would be apparent. On that basis, if there were any excess moisture in the boards, movement should have been visible in less than a year and certainly by mid March 2006. Mr

Dowling's evidence that movement was not visible until June or July that year makes it unlikely that the boards contained excess moisture.

- 52 Mr Casamento drew the conclusion that the boards were excessively moist when laid - in excess of 14% - from the amount of movement, but did not take readings as to the proportion of moisture they contained when he inspected them. Mr Atchison did take moisture readings when he inspected and recorded that, on 27 October 2008, the moisture content of the upper level flooring was only 3 to 4%, whereas the flooring in the general downstairs area was 8 to 10%. On the day of the site inspection, 29 April 2009, Mr Lees took readings which indicated the moisture content downstairs was approximately 12%, whereas the moisture content in the upper level was approximately 8%.
- 53 I accept the Builder's evidence that he acclimatised all the boards at ground floor level before laying them, and find no evidence that the upper level floor boards had excessively high moisture content when laid, but the moisture content was still too high for the location in which they were placed.
- 54 It is unfortunate that the design of the home seems to have led to excessive drying to the upper level floor boards. The area is not closed off from the kitchen and family room below, but is like a loft where the warm (or hot) air from the ground floor can rise. Under cross-examination Mr Atchison agreed that the timber should be acclimatised where it will be laid and that it will be apparent to a reasonable builder that an area upstairs such as the master bedroom will be warmer than the ground floor. I accept his answer that stacking wood in a fairly limited area on the upper level could have been impractical in the limited space in which the trades were working, but note that the Builder did not give evidence that this was the case.
- 55 On the balance of probabilities I find that the Builder is liable for the shrinking strip flooring in the master bedroom. Mr Atchison allowed \$4,097.00 for this item which given, that only \$120.00 is allowed for carpenter's materials, seems very low. I prefer the evidence of Mr Lees. On the third page of his report of 3 April 2009, Mr Lees said that if it is found that the flooring to the master bedroom does not require replacement, a cost saving of \$7,000.00 can be achieved. The Builder must pay the Owners \$7,000.00 for this item.

STEEL POST NOT PROPERLY BOLTED TO CONCRETE PAD FOOTING

- 56 Mr Casamento said that the main steel post at C1/PF3 is not properly bolted to the pad footing that supports it. The Builder says that he bolted it to the supporting pad with four bolts. Mr Casamento said:

Bolting of the steel post to the concrete footing is structurally unsatisfactory. Embedment of bolts into concrete is suspect. Some bolt nuts have not been properly tightened.

Mr Casamento's photograph 25 shows a bolt not fully tightened and I accept his evidence that it introduces the risk of vulnerability to the other

bolts in that pad. Mr Lees did not make a separate allowance for this item, which I assume is taken into account in rectification of the pad footings.

ROOF LEAK

- 57 I accept the evidence of Mr Casamento and Mr Lees that there is a minor roof leak for which the Builder is responsible. In accordance with Mr Lees' evidence, the Builder must pay the Owners \$368.00 for this item.

CEILING, WALL WINDOW AND DOOR DAMAGE

- 58 I accept Mr Dowling's evidence, given in response to my question, that no cracks were evident when they first moved in to the home, and that the first sign of damage was hairline cracks at some corners and flaking paint and that they are continuing to deteriorate, with the widest crack being approximately 8 to 10 mm wide at the widest point. I accept his evidence that he and his wife did not have the property inspected by an expert before they bought it at auction and that there was no sign of repainting when they inspected it before purchase.
- 59 I accept Mr Casamento's evidence that most of the cracks we saw on 29 April 2009 were category 2 or 3 cracks (on a 1 to 4 scale) and that they are building defects.
- 60 Because of the way evidence of cost has been given by Mr Lees, Longbow Constructions and Mr Atchison, I am not able to determine the amount that should be allowed for rectification arising out of the pad footings as distinct from the stumps installed by Professional Restumping. I need further evidence regarding the cost of rectifying the level of the first floor, ceilings, walls, windows and doors and regarding what allowances should be made for access to apply Uretek and to make good the access points. I also need evidence about the time that will be necessary to do this work, whether it will be necessary for the Owners to move out of the home while it is done, and whether this work can be done concurrently with the work arising out of rectification of the stumps, for which I have found the Builder is not responsible. I also reserved costs and interest.
- 61 I therefore direct that the proceeding return to directions before me concerning the further conduct of the proceeding.

SENIOR MEMBER M. LOTHIAN