

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO.D508/2010

CATCHWORDS

Timber floors, terms of contract, grade of timber, cracks between and within boards, expert evidence.

APPLICANTS	Wally Gradsack, Barbara Gradsack
RESPONDENT	Mr Sardar Gharib trading as C Styler Floor (ABN 32 790 228 959)
WHERE HELD	Melbourne
BEFORE	Senior Member M. Lothian
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	23 September 2010 and 22 November 2010 (on site)
DATE OF ORDER	30 November 2010
CITATION	Gradsack v Mr Sardar Gharib trading as C Styler Floor (Domestic Building) [2010] VCAT 1897

ORDER

- 1 The Respondent must pay the Applicants \$3,670. Payment must be made by 7 December 2010.
- 2 I direct the Principal Registrar to send copies of these orders and reasons to the parties by express post.

SENIOR MEMBER M. LOTHIAN

APPEARANCES:

For Applicants	Mr W. Gradsack and Mrs B. Gradsack in person on 23 September 2010; Mrs Gradsack only on 22 November 2010.
For Respondent	Mr S. Gharib in person

REASONS

- 1 The Owner-applicants, Mr and Mrs Gradsack, claim a refund of the whole sum they say was paid by them to the respondent foorer, Mr Gharib who trades as C Styler Floor. The contract was to lay new solid timber floors over the existing floors in three first floor bedrooms in Mr and Mrs Gradsack's home. Mr and Mrs Gradsack claim that the master bedroom floor is out of level with the tiled floors of the hallway and en suite bathrooms, the timber should have been select grade but is not, there are cracks in some of the boards and that only two coats of polish have been applied. Mr and Mrs Gradsack say the appropriate way to fix the alleged defects is to remove the floors laid by Mr Gharib.

THE CONTRACT

- 2 The parties agree that on 2 August 2009 Mr Gharib gave Mr and Mrs Gradsack a quote. Mr Gharib said that the quotation was in writing and produced his quotation book, which consists of white copies to be given to potential clients and carbon-impregnated blue copies which enables Mr Gharib to keep carbon copies for his records. I note that the carbon copy of quote 1321 dated 2 August 2009 was identified by Mrs Gradsack as having been signed by Mr Gradsack and that it is in date order in the quotation book.
- 3 The quotation form is printed, with some additional items written in. English is not Mr Gharib's first language, so understanding the written additions is not easy. The relevant printed parts are below in plain text, parts which appear as a carbon copy are in *italics* and parts which have since been written in ink are in **bold**:

Bedroom/s: *x 3* [ticked box]

New Floor [ticked box] *SPLAYING TSY OK 19 ML/HIGH FICHA*
GRAIT

LAYING SANDING & PULESHING

3 coats of ~~2-pack Polyurethane~~ : [ticked box] *waterbas*

1 + DLEVRY \$120

Other charges: [ticked box] **2 +DLEVRY. \$280 + \$550**

\$11800

- 4 I understand the words beside "New Floor" to mean:
Supplying Tasmanian Oak 19 millimetre (thickness). High feature grade. Laying, sanding and polishing.
- 5 I accept Mr Gharib's evidence that by "waterbas" he meant water-based floor polish and that by "+Dlevry" he meant that the price was plus delivery.

WHAT SHOULD THE CONTRACT PRICE HAVE BEEN?

6 The price included in carbon copy was \$11,800. Builders under s31 of the *Domestic Building Contracts Act 1995* must, and tradesmen like Mr Gharib should, provide an “all in” price for items of work such as the one Mr Gharib undertook for Mr and Mrs Gradsack. Nevertheless, I am satisfied that the parties did agree that there would be an extra sum for delivery of materials. I allow the extra sum of \$280. I do not allow the sum of \$120 as both the item and the amount were obviously written in after Mr Gradsack signed the quote. I also do not allow the sum of \$550, which Mr Gharib said was to shave the floor battens in the master bedroom, about which more is said below. Mr Gharib always knew that he had to batten the bedroom and this sum should have been taken into account in his quote. I therefore find that the contract sum was \$11,800 plus \$280, which equals \$12,080.

AMOUNT PAID

7 Mr and Mrs Gradsack say that they paid \$12,870. Mr Gharib claims that he received \$12,750. Neither party provided a receipt or other financial record to confirm the amount paid or received, but as Mr Gharib’s recollection is confirmed by amounts written on his quotation, I prefer his evidence on this point.

8 As I have found Mr and Mrs Gradsack paid \$12,750 but the contract sum was \$12,080, it follows that they have over-paid \$670, which Mr Gharib must refund.

FLOOR LEVEL

9 The parties agree that the pre-existing floor was substantially out of level and significantly lower than the tiled floors in the adjacent passage ways. Mr and Mrs Gradsack said they understood the contract was for Mr Gharib to produce a new floor that was level with the tiled floors. Mr Gharib said the contract was that he would produce a master bedroom floor that was level, but not level with the tiled floors. I note that there is little difference in the levels of the floors and tiled passage ways adjacent to the other two bedrooms. In the master bedroom the difference in height between the finished timber floor and the tiled floor at the en suite door is approximately 30mm.

10 I prefer Mr Gharib’s evidence on this point. I accept his evidence that the highest areas of the previous bedroom floor were distant from the doors to the tiled areas. The master bedroom floor was levelled by installing battens on the old floor that were thickest at the lowest side of the floor (near the door ways to the en suite bathroom and passage way), grading down to narrow at the highest part of the room. He could only achieve a floor that was both level in itself and approximately level with the tiled floors by shaving the floor joists. I accept his evidence that he was unwilling to do so for fear of weakening the structure.

- 11 I also observed on site that the doors to the en suite and passage way are only about a meter apart, and the floor between them is reasonably level, but there is approximately 10mm greater fall from the timber floor to the tiles in the en suite than there is to the passage floor. I therefore conclude that it was impossible for Mr Gharib to achieve doorways without falls and a level floor.
- 12 Mr and Mrs Gradsack have failed to prove this aspect of their claim and I make no allowance for it.

TIMBER GRADE

- 13 I cannot be certain that Mr and Mrs Gradsack understood “High ficha grait” on the quote to mean “High feature grade”. I can be certain that “select grade” was not included in the quotation and I am concerned that Mr and Mrs Gradsack’s expert, Mr Brett Scarpella, stated that the floors were to be select grade without saying how he came to this conclusion.
- 14 The appearance of the floors is generally attractive and workmanlike. The parties agree that they are not select grade, but I am not satisfied that they were required to be. The overall appearance of the floors is consistent with Medium Feature Grade - I note that Mr Scarpella said that “the general appearance of the floor is considered to be of a lesser grade” and said that it is “more representative of standard grade ... including a significant volume of utility grade”.
- 15 The joints between the boards are tight, with very little cracking between the boards. Between-board cracking which is apparent is not beyond acceptable in accordance with the *Guide to Standards and Tolerances* published by the Building Commission.
- 16 The only aspect of the floors which falls below standards of reasonable workmanship is that there are some cracks within boards. I counted approximately 20 very minor or hair line cracks and about ten more significant cracks or chips that should be filled, re-sanded and re-coated. There was also one very knotty board in the wardrobe to the north west bedroom that requires filling to the knot holes.
- 17 Mrs Gradsack expressed concern that placing furniture on the floors might cause them further damage, but provided no supporting evidence on this point. In particular, Mr Scarpella makes no suggestion that using the rooms and bringing in furniture might cause them to fail. I do not take Mrs Gradsack’s concern on this point into account.
- 18 In the absence of evidence from the parties about the cost to undertake this work, I find that Mr Gharib must pay Mr and Mrs Gradsack \$3,000 for this work, which includes an allowance for sanding and re-coating.

POLISHING

- 19 Mr Scarpella criticised the coating, but was not specific in his criticism and if he was mistaken concerning the required timber grade, might also have

been unaware that the polish was to be water based. I am not satisfied that the existing polishing is defective, but have allowed to make good polish subsequently to filling and sanding. I make no further allowance for this item.

CONCLUSION

20 Mr Gharib must pay Mr and Mrs Gradsack a total of \$3,670. Payment must be made by 7 December 2010.

SENIOR MEMBER M. LOTHIAN