

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING & PROPERTY LIST

VCAT REFERENCE NO. BP985/2017

CATCHWORDS

Building and Property List – Painting – Contract between Builder and Painters – Terms of the contract.

APPLICANT	A & G Coatings Pty Ltd
RESPONDENT	Ivy Constructions Pty Ltd
WHERE HELD	Melbourne
BEFORE	Robert Davis, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	13 September 2017
DATE OF ORDER	13 September 2017
DATE OF WRITTEN REASONS	27 October 2017
CITATION	A & G Coatings Pty Ltd v Ivy Constructions Pty Ltd (Building and Property) [2017] VCAT 1760

ORDER

- 1 The respondent pay the applicant the sum of \$5541.90 plus cost of application fee of \$292.70.

Robert Davis
Senior Member

APPEARANCES:

For the Applicant: In person

For the Respondent: Mr R. Curie, director, in person

Note: These written reasons consist of an edited transcription of reasons given orally at the conclusion of the hearing.

REASONS

Application

- 1 The respondent contracted to do building works in the St Kilda Synagogue in Charnwood Avenue, St Kilda in 2014. Part of those building works involved painting to be performed and as a result the applicant was sub-contracted as a painter.
- 2 The initial document of contraction set out the outside work to be done, which has formed the basis of this dispute. I do not need to go into that in detail but I note that it required a two-coat system so as to match existing colour. That was a quotation dated 6 March 2014 and it was at a time that the respondent was preparing its tender for the Synagogue.
- 3 The applicant was engaged to do the painting work and there was some discussion about the painting but not a great deal. In the end, the area of dispute in this matter seems to be as to the agreement between the parties and the amount that is actually owed by the respondent to the applicant, if the work had been performed to perfection.
- 4 The respondent stated that that work was valued at \$3562.70. The applicant claimed that it was entitled to \$6577.90.
- 5 There is a dispute as to a mathematical calculation which arises as a result of invoice no. 328. I have two copies of invoice no. 328; one copy of the invoice no. 328 says that the balance due is \$3193.40; and the other invoice copy says that the balance due is the same figure but, when one looks at the subtotals in the second copy, they do not add up. In my view, there seems to be a figure of about \$720, I believe, or it could read \$420, where there is a discrepancy. However, looking at the documents, I have come to the conclusion that the figure of \$720 or \$420 is in the original invoice and it was somehow cut out on a copy and I have come to that conclusion because if one adds up the subtotals, they are the same on both invoices and the only way they could be the same would be if that figure was included. Thus, I take the invoice to include those three items.
- 6 The respondent says that it should not have to pay any of this sum, for two reasons. First, it says that the work was defective and secondly it says that there was a 'Knuckle Boom' which was hired for an extra two weeks as a result of a request by the applicant and it says that the extra hire cost was \$1500.00. I deal with the 'Knuckle Boom' first. I was shown an invoice in relation to the hire of the 'Knuckle Boom' which suggested that, for a period of three weeks, the hire of the 'knuckle boom' was about \$3000.00.
- 7 In fact, it was only hired for an extra two weeks as a result of what the applicant said it needed because it was running behind schedule. It was agreed by the respondent that it would pay 50% of the hire of the 'Knuckle Boom' and therefore the total cost of the 'Knuckle Boom' for three weeks

was \$3139.40. I subtract a week from that, which reduces the cost to \$2072.00 and half of the \$2072.00 is \$1036.00.

8 Thus in my view, dealing with this matter, the applicant's claim should be reduced by \$1036.00 as I find that it was responsible for 50% of hire of the 'knuckle boom' for two weeks.

9 I now turn to the major item in dispute, which is the painting. It seems to be clear and accepted by the parties that there have been problems subsequent to the work being performed and the defect is described by Haymes Paints Australia, in a report which has been tendered to the Tribunal, which states:

Symptoms include cracking and delaminated coatings, with the presence of mould underneath, indicating levels of contamination. Also rust water run-off from a fixed metal structure. The same coating system and method had been utilized in various other areas of the site with no sign of failure, indicating the problem is isolated to the nature of the plinth substrates.

The respondent in fact says that 50% of the plinths have difficulties which are a problem and it relies on a report from Master Painters Australia which stated:

There is mould and visible rust spots from a steel frame. The mould will require washing with ammonia to kill the mould and the metal frame will need to be removed and painted.

Top of plinth that has visible mould will require treatment prior to any painting.

Due to the lifting on the rendered coating, I would recommend that this area be stripped off and repainted. Due to the location of the plinths, I would also suggest that another type of coating be considered such as a membrane product.

The metal light frames require painting to eliminate the possibility of rust spots in the future. The frames will require ongoing maintenance.

10 I note at this stage, and it is accepted by the parties, that the metal frame was not part of the applicant's contract to paint and, in my view, it cannot be responsible for the rust which comes from that frame which sits on the substructure.

11 In relation to the mould and other matters, the question is: was the applicant obliged to follow the instructions from Haymes Paints which required a three-stage process? Those instructions were:

SURFACE PREPARATION

General Surface Preparation

1. Fill cracks, nail holes and imperfections with Rendertex Render Patch.

2. Scrape all loose/flaking paint. All surfaces must be clean, bare, dry and free of wax, grease and other contaminants.
 3. Apply 1 coat of Rendertex Renderprime where required.
- 12 The applicant stated that the area was washed with a pressure hose and was then primed, which was in excess of what was required by the contract, and then it was painted. The respondent said that it was an implied term of the contract that the applicant would abide by the instructions of the paint manufacturer. However, the documents to which I have already referred make it clear that there needed to be two coats to comply with the contract. I consider this a very different matter to one where a private citizen with no building experience whatsoever is contracting with a painter. Under those circumstances, the citizen is relying entirely on the painter's skill and experience.
 - 13 In this particular instance, the builder has skill and experience. It is said that the builder did not have any particular painting experience. That may be so, but there could well have been sufficient knowledge and experience for the builder to say that the applicant should comply with the paint manufacturer's instructions, rather than accepting what was said in the letter which was written to it: that two quotes would be given.
 - 14 In accepting the letter that two quotes would be given, that is what the parties were contracting for. They were not contracting for it to be in accordance with the paint manufacturer's instructions. This is a different situation to the owner of the building contracting with a painter or a builder itself. Given those circumstances, and having found that the contract only required the two quotations and that the metal frame was not required to be painted, in my view the work complied with the contract.
 - 15 Thus, what I will allow is the amount claimed less \$1036 for the hire of the machinery. The total sum I will allow the applicant is \$5541.90 plus the application filing fee of \$292.70.
 - 16 I will order the respondent pay the applicant the sum of \$5541.90 plus cost of application fee of \$292.70.

Robert Davis
Senior Member