

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. D396/2014

**CATCHWORDS**

Work and materials –work to be done in a proper and workmanlike manner using good and sufficient materials – concreting to match earlier surface – not matching – not coloured concrete as agreed – stencilled surface poorly executed - work defective – cost of replacement ordered

<b>APPLICANT</b>	Ms Lynda Joy Blanche
<b>RESPONDENT</b>	P & J Guzzo
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member R. Walker
<b>HEARING TYPE</b>	Small Claim Hearing
<b>DATE OF HEARING</b>	17 September 2014 (Melbourne) and 25 November 2014 (on site at 28 Morris Street Parkdale)
<b>DATE OF ORDER</b>	16 December 2014
<b>CITATION</b>	Blanche v Guzzo (Building and Property) [2014] VCAT 1575

**ORDER**

Order the Respondents to pay to the Applicant \$3,892.90.

**SENIOR MEMBER R. WALKER**

**APPEARANCES:**

For the Applicant	Mr L. Blanche in person
For the Respondent	Mr P. Guzzo in person

## REASONS

### Background

- 1 The Applicant is the owner of a house in Parkdale. The Respondent is a concreting contractor.
- 2 On 11 November 2013 the Respondent quoted to lay a concrete porch for the Applicant at her house for a price of \$4,290 including GST.
- 3 The new porch was to replace a previous porch that had a mock bluestone surface. The bluestone effect was to be created by pouring coloured concrete and shaping the surface with a metal stencil to match the previous porch. The Applicant produced a photograph at the hearing showing what the previous porch had looked like. The replacement porch was to have the same appearance.

### The dispute

- 4 The old porch was removed on 17 December 2013 and the new porch was poured the following day. The Applicant was told not to walk on the porch for a few days.
- 5 When she inspected it on 23 December 2013 she was dissatisfied with the job. She contacted the Respondent to demand that he refund her money or replace the porch. He visited the house and she pointed out her concerns but although he agreed to do some limited work no agreement could be reached to resolve the matter.
- 6 This proceeding was issued on 30 April 2014 by the Applicant claiming the sum of \$3,892.90 said to be the cost of demolishing the porch the Respondent has poured and replacing it with one in accordance with the agreement.

### The hearing

- 7 The matter came before me for hearing on 17 September 2014. Evidence was given by the Applicant and her witness Mr Camm who has had some building experience. The Respondent was present with another concreter, a Mr Apudjotis.
- 8 The Applicant relied upon a report that had been prepared by a Mr Ivenskis of Johns Lyng Group Pty Ltd, Builders. His expertise to provide such a report was attacked by the Respondent.
- 9 There was considerable dispute as to the appearance of the porch and whether it was accurately depicted in the photographs produced by the Applicant. As a consequence, after hearing evidence, I informed the parties that I wished to see the condition of the concrete myself and I adjourned the proceeding to an on site hearing on 25 November 2014.
- 10 At the on site hearing the Applicant and the Respondent were present as was the Applicant's witness Mr Camm. After listening further to the parties

and looking at the aspects of the work they each pointed out I informed them that I would provide a written decision.

### **The law**

- 11 It is an implied term of any contract for work and labour done and materials supplied that the work should be done in a proper and workmanlike manner using materials good and sufficient for the purpose. The work and materials must also be in accordance with the agreed terms. Similar terms are imported into any contract for domestic building work by s.8 of the *Domestic Building Contracts Act 1995*.

### **Findings**

- 12 I find the following defects with the work, all of which are identified in Mr Ivenskis' report and all of which were quite apparent upon the inspection that I made:
1. The separation lines left on the concrete that are intended to create a bluestone paver effect have sharp edges in the majority of places that protrude upwards. These would not only be uncomfortable to walk on but could be quite dangerous if anyone were to fall on them. Mr Ivenskis said that this was due to the stencil being applied incorrectly. The Respondent said that the effect that he had produced was similar to what the Applicant previously had but what I saw at the on site inspection does not look like what is depicted in the photograph of the former paving that was tendered at the hearing. The former paving had smooth edges.
  2. There are a number of marks in the surface of the concrete. It is unclear what has caused these. Mr Ivenskis suggested they were finger and tool marks and that could well be so. In any event they ought to have been removed at the concrete was stamped and before it set.
  3. The level of the concrete falls towards the house. I identified three areas where it falls towards the house. The first is next to the front door, the second is along the front of the house and the third is towards the end of the patio where it steps down to the driveway. A bucket of water was tipped on the porch and I saw the water tracking down the grooves in the concrete and running towards the house. The Respondent said that this was because the concrete was grooved. It does accumulate in the grooves but it then runs along the grooves to the house. The Respondent also pointed out that there was a roof over the porch which would be expected to prevent rain from falling upon it. There is a roof but it does not cover the whole of the porch and wind driven rain could still fall on the porch. I saw evidence of ponding in the form of silt in the areas where the level was lower. In any case, the concrete should not fall towards the house if it is to comply with the Building Code of Australia.

4. The depth of the grooves created by the stencil is not consistent. I saw areas where the grooves appear to have been cut as distinct from stencilled and the result was quite unsightly. When I pointed that out to the Respondent he said that this was because the concrete went off as he progressed with the stencil from the house towards the driveway. That the concrete would go off should be taken into account by any competent concreter and he should start stamping early enough to be able to complete the job in good time. The porch is not a large area.  
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5. There was complaint about the colouring of the concrete. Mr Ivenskis said that it was inconsistent, with darkened white spots appearing regularly. There appeared to be some white spots that have formed on top of the concrete in places but the real complaint about the colour is that it is not coloured concrete which the contract required. According to the Applicant the previous porch was poured using coloured concrete which meant that the colour went right through. If it chipped, it would still be the same colour underneath. The Respondent's quotation has the square "colour" ticked. He acknowledges that he used plain concrete but used a coloured finish on top. There was a dispute between the parties as to whether there was a conversation to the effect that using coloured concrete would be more expensive. In that regard I prefer the evidence of the Applicant

## **Conclusion**

- 13 I find that the work is quite unsightly and not done in a proper and workmanlike manner. The Respondent has offered to grind off the sharp edges and recolour the surface of the concrete but this will not address the problem of the negative fall towards the house and I am not satisfied that it would give the Applicant the result that she has paid for.
- 14 I am satisfied that the porch will have to be removed and replaced.
- 15 The Owner claims \$3,892.90 as the cost of replacing the concrete. Since the work is of no value she would be entitled to at least and so an award of that amount will be made.

**SENIOR MEMBER R. WALKER**