

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D256/2011

CATCHWORDS

Domestic building – floor grinding and polishing – failure of coating material – incompatible cleaning agent used on floor by owners - expert evidence as to likely cause of failure – failure not proven to be due to faulty workmanship or materials

FIRST APPLICANT	Mr G Boyle
SECOND APPLICANT	Ms J Nardella
FIRST RESPONDENT	Allgrind Concrete Finishing Pty Ltd (ACN 138 660 607)
SECOND RESPONDENT	Mr Nicholas Aylward
THIRD RESPONDENT	Mr Anthony Aylward
WHERE HELD	Melbourne and on site
BEFORE	Senior Member R. Walker
HEARING TYPE	Hearing
DATE OF HEARING	15 June and 27 July 2011
DATE OF ORDER	24 August 2011
CITATION	Boyle and Anor v Allgrind Concrete Finishing Pty Ltd (ACN 138 660 607) and Ors (Domestic Building) [2011] VCAT 1626

ORDER

1. Order the First Respondent Allgrind Concrete Finishing Pty Ltd to pay to the Applicants \$200.00.
2. The claim is otherwise dismissed.
3. No order as to costs.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicants	In person
For the Respondents	In person

REASONS

Background

- 1 The applicants (“the Owners”) are the owners of a dwelling house in Lalor. The first respondent (“the Contractor”) carries on business grinding and polishing concrete slabs. The second and third respondents are directors of the first respondent.
- 2 In early February 2010 it was agreed between the Owners and the Contractor that the Contractor would grind and polish the concrete floors in the house for a price of \$7,700.00.
- 3 In mid March 2010 the second and third respondents carried out the major part of the work over about 5 days and on 26 March 2010 the Owners paid them \$6,500.00.
- 4 In May 2010 the third respondent returned to finish the job and it was agreed to apply self levelling product to one of the floors at an additional cost of \$800.00. The job was then completed at the end of May when the final top coat was applied. The final surface used by the Contractor is a single packaged top coat product called Tuff Coat (“Tuff Coat”).
- 5 The balance of the original contract sum of \$7,700.00 namely, \$1,200.00 was paid by the Owners on 18 June 2010. The amount of \$800.00 for self levelling product was discharged by a further payment of \$600.00 and the Owners purchasing \$200.00 worth of vinyl flakes.

Complaint

- 6 In July 2010 Mr Boyle rang the third respondent to complain that the floors had lost their gloss level. The third respondent said that would be impossible and asked Mr Boyle whether any chemical or product had been used on the floor. According to the third respondent Mr Boyle denied several times that anything like that had been used. It was agreed that the second and third respondents would come out and look at the floors and rectify any problems.
- 7 There was some delay while other building works at the house were completed and then in about February 2011 the third respondent returned to the site and agreed that the gloss had deteriorated in a number of areas.

- 8 He said in evidence that when he inspected the floor in early February 2011 he found that the coating had dulled and there were white cloudy patches in spots. He said the entire area had been affected except for the floor of one wardrobe. This section of floor is separated from the floor of the rest of the room by a strip.
- 9 Although, according to his evidence, he considered that the floor had been affected by some chemical he agreed to re-sand and polish the floor.

The re-sanding

- 10 The third respondent said that when he began sanding the floor on 15 February 2011 he had trouble doing so due to the paper clogging and grabbing on the floor. He said that normally Tuff Coat sands very easily leaving a fine white dust but in this instance instead of leaving a fine dust it was balling up and grabbing onto the sanding disk. He said that some areas had milky residue which the power sander could not sand through and he had to scrub those areas by hand with water and sandpaper causing his fingers to become red, sore and numb.
- 11 Later that day both the second and third respondents formed the view that some solvent had been used on the floor but nonetheless completed the work.
- 12 After the floor had been re-coated it was noted that there was some “frying” in areas, that is, a deterioration of the material brought about by the sanding process.
- 13 The third respondent telephoned Mr Boyle that evening. He said in evidence that Mr Boyle then admitted to him that the Owners had used a citrus product on the floor, that it had been an honest mistake on their part and they did not think that any damage would occur to the floor as a result.
- 14 Various discussions then took place but there was no resolution of the dispute.

This proceeding

- 15 The Owners commenced this proceeding in March this year seeking damages of \$9,990.00. The matter came before me as a Small Claim on 15 June. I heard evidence from the parties and their expert witnesses and then went on site on 27 July to examine the condition of the floor myself. Having done so I informed the parties that they would receive a written decision..

The cleaning of the floor by the Owners

- 16 The Owners said in evidence that the first time the floor was cleaned was in December 2010. They said that they used a product called “Orange Power, Spray and Mop Floor Cleaner”. According to the evidence of the Contractor which is supported by some documentary evidence, Coles do not stock that product but they do stock another cleaner called “Orange Power Multi Purpose Cleaner and Sanitiser”.

- 17 On the issue as to when the floor was cleaned, a report was tendered on behalf of the Contractor by another flooring contractor, a Mr Jenkins, who carries on business under the name “Granicrete” in grinding and polishing floors. He said that he was called in by the Owners who told him that they were unhappy with the finish on the floors.
- 18 Mr Jenkins said in his report that he told the Owners he believed that there was something wrong with the sealer, that it was soft as though it had not been fully cured or had been broken down with a solvent of some sort. He said that Mr Boyle told him that he cleaned it with a citrus based cleaner and that after doing so, the floor turned a milky colour in some areas. Mr Jenkins said that he told Mr Boyle that in his opinion the installers had done a good job, that the sanding marks were from sanding a sealer that was too soft.
- 19 The Owners acknowledged that on 15 February 2011 the second and third respondents blamed the condition of the floor on the citrus cleaner.

Expert evidence

- 20 There are two issues raised in the expert evidence. The first is whether the concrete was ground sufficiently so as to expose the aggregate and the second related to the sanding and polishing of the floor.
- 21 Expert evidence on behalf of the Owners was given by Mr Love, a building consultant. Mr Love criticised both the exposure of the aggregate that is, the grinding of the slab, and also the final finish.
- 22 Another report was tendered from a Mr Clarkson of Cornerstone Commercial Maintenance Australia Pty Ltd. Mr Clarkson has had 30 years in commercial and industrial flooring. He inspected the floor on 11 March 2011 for the purpose of providing a quotation to rectify the work.
- 23 Evidence as to the chemistry involved in these coatings was given by an engineer and protective coating specialist, Mr Dromgool, whose report was tendered by the Contractor.
- 24 A flooring contractor, Mr Laurence, who has had 12 years’ experience in domestic and commercial epoxy polyurethane flooring and grinding and polishing of floors inspected the floor on 28 May 2011 and prepared a report which was tendered by the Contractor.
- 25 Finally there is the report of Mr Jenkins as to the timing of the cleaning of the floor by the Owners.

Exposure of the aggregate

- 26 Mr Love said that the grinding of the floor had not been carried out in a manner that removed a consistent amount of material. He said that there were “clear signs” of little or no grinding in places.
- 27 The basis of Mr Love’s opinion appears to be that more aggregate is seen in some areas than others. It is acknowledged however that the slab when

originally poured, was not poured with a view to it being eventually polished. According to the evidence, the concrete for such slabs usually contains more aggregate material to ensure more exposure of aggregate and, consequently, a better appearance.

- 28 Mr Clarkson said that there had been insufficient exposure of aggregate and that that was “very evident around the perimeter walls in each room”. That was not my observation. I could not see any correlation between exposure of aggregate and the position of the walls.
- 29 Mr Laurence said that he considered that the exposure of the aggregate was satisfactory, in that the slab was not engineered for that type of finish when originally poured.
- 30 Mr Jenkins said that thought that the overall finish was very good and that the workmanship was of a high standard, although the focus of his report was more on the finish than the grinding.
- 31 It did not appear to me at the inspection that there was any consistency in the areas where the aggregate is not visible that is, it does not appear that there is aggregate in the middle of the passageways but not at the sides which was the impression given to me at the hearing. There was also no unevenness apparent to me in the grinding. I am not able to say that there has been insufficient grinding.

The finish

- 32 Mr Love says that the floors had to be cleaned of all dust other materials prior to installing the high gloss materials and that it was “clearly apparent” that process had not been carried out properly. He said that when the Contractor attempted to sand back the finish and then re-apply the additional coats of the top gloss material they damaged the whole of the floor. He does not say how that occurred.
- 33 Mr Clarkson said “it appears that the urethane coating has been sanded to the stage where the coating underneath was soft, thus resulting in what we, in the industry, call “frying”. This is a result of the solvents in the coating being applied then reacting with the coating underneath”.
- 34 Mr Laurence said that the sanding disk marks he saw were relatively minor and his opinion seemed to be that they were as a result of the floor being softened by a cleaning agent which would cause the disk to grab. He said that those scratches would not have been visible until after the recoating of the floor.
- 35 Mr Dromgool said that Tuff Coat is a single packaged product, which eliminates any possibility of incorrect mixing or incorrect reactions with ingredients. He said that failures of such a product are almost unheard of and that when fully cured the film is hard, very abrasion resistant and very durable.

The cause of the material failure

- 36 It seems to be clear that the coating material applied to the floor failed in that it became dull in appearance, had cloudy patches and when sanded months after being applied it was soft rather than hard, as it should have been. As a consequence of it being soft, it “fried” and also scratched.
- 37 There is the floor in the wardrobe that was shown to me that shows no effect of dulling or cloudiness. This is separated from the rest of the floor by a strip of material. If the problem is in the material, why does that not exhibit the same symptoms?
- 38 Mr Love said that it would be reasonable to assume that the sanding process was carried out prior to the installed coating hardening but it is not disputed that the re-sanding took place many months after the initial application and at a time when the surface ought to have fully hardened.
- 39 Mr Clarkson seems to say that it was sanded until the material became soft, suggesting that the problem was caused by excessive sanding. However that would not account for the dull appearance and the cloudy patches that were seen before the sanding began. Mr Clarkson then says that the failure was a result of the solvents in the coating being applied then reacting with the coating underneath. He does not describe the chemical process involved but in any case, it would not explain why the floor in the cupboard appears to be unaffected.
- 40 The only expert evidence that I have as to the cause of the failure of the material that deals with these matters is that of Mr Dromgool. He said that the product is sensitive to medium to high alkali conditions which can cause alkali-induced hydrolysis. They are also sensitive to solvents.
- 41 After referring to the chemical properties of both of the orange based cleaning agents referred to in the evidence, he said on page 7 of his report:
- “This means that there is a very strong chance that d-Limonene could or would be very damaging to a coating material such as a moisture cured polyurethane, particularly if it remained in contact with the film for some time. Undoubtedly adding to the potential of the d-Limonene in a surface cleaner to be aggressive to a polyurethane painted floor, would be the alkalinity of the cleaner and the presence of water”.
- 42 He referred to warnings given on one of the cleaners to the effect that it should not be left on the surface for too long.
- 43 Mr Dromgool said that any difficulties with the product would have become apparent quite early and certainly earlier than mid July. He pointed to the area of film within the wardrobe which remains unaffected and says that if the paint was defective failure would have been general. He said that the only logical cause of the coating film becoming cloudy or losing gloss and then being sticky when sanded was some external influence.
- 44 In page 9 of his report Mr Dromgool said that he considered the most likely cause of the damage to the top coat was the use by the Owners of a cleaning

material that contained d-Limonene. He said that he did not believe that it mattered which of the two orange power products the Owners used because they both contained d-Limonene and they were both quite strong alkalines in an aqueous solution.

The unpolished area

- 45 There is a very small area of floor in the bathroom between the vanity and the bath that was not ground and polished. There was very little mention of this during the hearing but it was referred to and it was pointed out to me on site. According to the respondents, they were told by the builder that that part of the floor would be covered by cabinet work and that the design has since changed.
- 46 The plans show that this part of the floor is not covered by cabinet work. The agreement was to do the whole floor and so I should make an allowance for this. It is a small out of the way area and would not be noticeable by anyone not looking for it. That might explain why the Respondents were nonetheless paid in full for the job and why it was not an issue until the parties fell out over the main issues to do with finish and grinding.
- 47 I will allow compensation of \$200.00 for this small area.

Conclusion

- 48 The onus of proof is on the Owners to show that the work was not done in a proper and workmanlike manner or that the materials used were not good and sufficient.
- 49 It is quite apparent that the coating has deteriorated and that this is what has caused the milkiness and the softness.
- 50 On the balance of probabilities I am not satisfied that the floor was insufficiently ground, nor am I satisfied that the milky appearance was due to any fault of workmanship or material. Rather, it appears to have been the result of the cleaning material used by the Owners.
- 51 The sum of \$200.00 will be allowed but the rest of the claim will be dismissed. There will be no order for costs.

SENIOR MEMBER R. WALKER