

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING & PROPERTY LIST

VCAT REFERENCE NO.BP1409/2017

CATCHWORDS

Claim for cost of replacement of timber flooring which had delaminated and buckled 8 months after installation; respondent alleged cause was water damage resulting from excessive mopping of the floor; cause found to be defective installation of floor by respondent in failing to provide expansion gaps around perimeter of flooring and between rooms and a moisture barrier beneath the underlay as required by manufacturer's installation guide; respondent ordered to reimburse applicants for cost of replacement of flooring and loss of rental

FIRST APPLICANT	Brett McDonald
SECOND APPLICANT	Candida Williams
RESPONDENT	Welcon Homes Pty Ltd (ACN 120 673 127)
WHERE HELD	55 King Street Melbourne
BEFORE	BW Thomas, Member
HEARING TYPE	Hearing
DATE OF HEARING	19 December 2017
DATE OF ORDER	1 February 2018
CITATION	McDonald v Welcon Homes Pty Ltd (Building and Property) [2018] VCAT 150

ORDER

The respondent must pay the applicants the sum of \$2,906.00 and the filing fee of \$636.25, a total of \$3,542.25.

BW Thomas
Member

APPEARANCES:

For Applicants

Brett McDonald, in person

For Respondent

Steven Gladwell, Director

REASONS

BACKGROUND

- 1 Mr McDonald and Ms Williams are the owners of a single storey townhouse in Clifton Springs constructed by the respondent in 2015. Handover took place in December. In September 2016, it was observed that the timber floor boards had begun to peak and pop out of alignment.
- 2 A building consultant engaged by the applicants' insurer concluded that the damage was due to faulty installation of the flooring, not excessive use of water cleaning the floor, as claimed by the respondent.
- 3 The floor was replaced at a cost of \$2,906.00 which the applicants claim from the respondent, together with consequential expenses. The total claim made is for \$5,629.37.

THE HEARING

- 4 The hearing took place on 19 December 2017. Mr McDonald appeared for himself and Ms Williams. Mr Gladwell, the Director, appeared for the respondent.
- 5 The applicants relied on the following documentation:
 - 10 photographs showing the condition of the timber flooring before and after its removal;
 - a written statement from Ms Emma Smith of Bellarine Rentals, the Property Manager;
 - a written statement from Ms Alicia Wood, the tenant;
 - a written statement from Aldo Sortino of Bayside Flooring, who replaced the original flooring;
 - a floor plan of the affected area;
 - a report of Mr Brent Anderson of Sergon Building Consultants;
 - the Formica Flooring Installation, Care and Maintenance Guide ("the Formica Installation Guide"); and
 - Carpet Call invoice dated 30 March 2017 for \$2,906.00.
- 6 Ms Smith, Ms Wood, Ms Sortino and Mr Anderson did not attend to give oral evidence.
- 7 Mr Gladwell produced a document entitled "Respondent Statement" with attachments A-H, and called Mr Tony Caramello, who installed the flooring.

THE ISSUES

- 8 The primary issue for determination by the Tribunal was whether the peaking and popping of the timber flooring was due to defective installation or water damage. The question of the quality of the installation turned in part on whether the floor was installed in accordance with the Formica Installation Guide

THE EVIDENCE

The applicants' evidence

- 9 Mr McDonald deposed that on 12 November 2016, Mr Gladwell and Mr Tony Caramello inspected the flooring. On 18 November 2016, Mr Gladwell advised Mr McDonald by email that he and Mr Caramello considered that the damage to the flooring was caused by water.
- 10 Mr McDonald lodged a claim with his insurers. On 19 January 2017, Brent Anderson of Sergon Building Consultants inspected the flooring and provided a report to the insurer dated 9 February 2017 (the Sergon Report). In that report Mr Anderson opined that:
- I observed that one row of flooring, near the centre of the open plan kitchen/meals and living room, is buckled and is raised out of alignment. I also observed that the flooring adjacent to the southern wall is buckled and is raised out of alignment. Furthermore, the laminated surface of the flooring, adjacent to the sliding door on the Western Wall elevation of the room, has detached from the HDF substrate.
- I observed that the flooring is installed throughout the open plan kitchen forward/meals and living room at the western end of the property, and that the flooring continues into the central hallway. I did not observe an expansion gap at the door opening that separates the open plan/meals and living room from the central hallway.
- Flooring that is installed in adjoining rooms must be separated by a 20 mm gap, to accommodate anticipated moving in the flooring. HDF flooring is a wood based product ..., which will expand and contract with variations in temperature and humidity. The omission of an expansion gap at this location will cause the floor to buckle and become raised out of alignment.
- I refer to the manufacturer's installation guide, Formica Flooring, Installation Care and Maintenance Guide dated September 2015 ...
- 11 On 2 March 2017, Mr McDonald emailed a copy of the Sergon Report to Mr Gladwell. On 17 March 2017 Mr Gladwell replied by email that he did not accept the Sergon Report and was not prepared to replace the flooring. In April 2017 the flooring was replaced by Bayside Flooring, engaged by Carpet Call Flooring Centre.
- 12 The Sergon Report states that the flooring is buckled and out of alignment due to the omission of an expansion gap at the door opening between the

open plan kitchen/meals area, the living room and the central hallway. Rectification required is the installation of expansion gaps in accordance with the manufacturer's recommendations.

13 The Formica Installation Guide Pre-Installation Checklist states:

- Formica Flooring must be laid as a floating floor. It must not be glued or nailed to the sub floor.
- **PLEASE NOTE** an expansion gap of 1.5mm per lineal metre per side is required around the perimeter of the floor, with 10mm being the absolute minimum
- a minimum 10mm expansion gap must be left around the perimeter of the laid floor;
- flooring must be laid separately between adjoining rooms with a 20mm gap between the door frames and the gap covered with an expansion profile.

14 The Formica Installation Guide Flooring Accessories Checklist states:

- **COMBINATION FOIL/FOAM UNDERLAY.** This is to be laid on top of the sub-floor(foil side up) for moisture protection, sound deadening and insulation

15 The photographs of the site show:

- the popping of the boards near the entry from the hallway into the living room;
- there is no expansion gap between the hallway and the living area;
- the majority of the floor in excellent condition and not water damaged;
- the quad removed, and no expansion gap between the ends of the boards and the wall;
- a board adjacent to the wall where there is no expansion joint popping out;
- the worst affected boards near the entrance to the hallway pushing into each other; and
- no moisture barrier between the foam underlay and the slab.

16 A photograph taken from a Google search shows water damaged laminate flooring has water mark staining and blisters.

17 In his letter to Mr McDonald, Mr Sortino says:

The peaking of the boards was so severe, that the boards had crushed and broken the ends. I believe this to be caused by a lack of expansion gap (sic) around the perimeter of the floor. When we removed the beading from the edge of the floor, this was confirmed, as the floor boards were hard against the skirting boards.

There was no sign of water damage or water saturation on this floor. Once the flooring was removed, we noticed that there was no moisture barrier under the floor, only a cell-air type underlay. With this type of flooring, a moisture barrier is a necessity not an option.

...

In summarizing:

- The flooring should have been installed with a minimum of 10mm gap around the perimeter.
- The flooring should have had an expansion break between the hallway and living room.
- A moisture barrier should have been laid underneath the underlay.

The respondent's evidence

- 18 Mr Gladwell gave evidence that a floating laminate floor supplied by the builder was installed in the living area and hallway in December 2016 by Mr Caramello, the principal of Best Layed Floors. The Occupancy Certificate was issued on 8 December 2016, and handover took place shortly thereafter.
- 19 An email from Mr McDonald dated 17 May 2016 attached the Three Month Maintenance Request under the Building Contract. (Attachment D). No reference was made in the Request to the flooring. In July 2016, Mr Gladwell conducted a maintenance inspection, some 8 months after handover, but again no issue was raised regarding the floor. Mr McDonald interjected to say that the Maintenance Request was prepared before the flooring had been subjected to the winter.
- 20 On 6 October 2016, Mr McDonald advised there was an issue with the flooring. The flooring was inspected by Mr Gladwell and Mr Caramello on 12 November 2016, in Mr McDonald's absence. Ms Wood, the tenant, was present. Mr McDonald disputed that Ms Smith, the property manager, was present.
- 21 The floor boards throughout the rear living area were warped and bowed with split joints. The flooring in the hallway appeared undamaged. No structural movement was evident and the roof/ceiling, the pipework in the kitchen area and the rear sliding door showed no sign of leakage.
- 22 Using an electronic moisture meter, Mr Caramello checked the moisture content of the flooring. The undamaged hallway recorded a reading of -5.9 indicating zero moisture. The rear living area consistently recorded readings of +9.0 indicating a 9% moisture content. Mr Gladwell did not take photographs of the location of each reading, but believed they were recorded in his diary. He did not produce the diary. The tenant was not shown the readings. Mr McDonald suggested that, depending on the calibration of the moisture meter, the readings can be unreliable.

- 23 In an email to Mr McDonald dated 17 November 2016 (Attachment E), Mr Gladwell set out these findings, concluded that the floor had been subjected to water damage and denied incorrect installation of the flooring. He suggested a claim for water damage be made to the home insurer.
- 24 In the Sergon Report, two relevant comments were made by Mr Anderson:
- I note I did not remove the quad mould from the perimeter of the room ... (page 3, paragraph 5)
- and
- ... the laminated surface of the flooring, adjacent to the sliding door on the western wall elevation of the room, has detached from the HDF substrate.
- 25 It is common for wetted HDF and MDF to delaminate. This delamination is observed beside the sliding door. There was no testing of the moisture content of the flooring, or confirmation and measuring of the expansion joints. The three areas of flooring Mr Anderson identified as buckling and being out of alignment, namely the centre of the open plan kitchen, meals and living room, adjacent to the southern wall, and adjacent to the sliding door on the western side, are remote to the interface between the hallway and the living room.
- 26 In the Domestic Building Assessment Report dated 14 June 2017 prepared for Domestic Building Dispute Resolution Victoria (Attachment G), the assessor did not find the building work to be defective.
- 27 In the Formica Installation Guide Care and Maintenance Section, it is stated:
- Under no circumstances should you wash the floor with wet cloths or mops. This only spreads dirt and can cause swelling of the joints.
- 28 In her statement, Ms Wood, the tenant, said that she had mopped the floor with water. This has caused the floorboards to absorb moisture, delaminate, swell and twist. The swelling has caused the flooring to expand across the expansion gaps and buckle upwards. The damage is the result of improper maintenance, not defective workmanship.
- 29 Mr Gladwell produced three samples of timber which he said were the same type as the subject flooring, and which had been soaked in water for approximately an hour. Mr McDonald noted that no warping or buckling was apparent in any of the samples, but in any event, the samples were not evidence that the buckling of the flooring in his townhouse was caused by water.

Mr Caramello

- 30 Mr Caramello said expansion gaps were installed in the perimeter of the flooring in the hallway using packers of 5-10 mm thickness.

- 31 The flooring was tested where it had bowed or buckled in the rear living/meals area, which indicated the presence of moisture, and he was in no doubt that water damage had caused the floor to buckle in this area.
- 32 Although he was aware of the Formica Guide before he laid the floor, he did not consider an expansion gap was necessary between hallway and the meals/living area. He conceded that the combination foil/foam underlay was not installed under the flooring, because he was not aware that this was required by the Guide, and in any event, it was not provided by the builder. He also conceded that some of the floorboards in the hallway had been glued to the subfloor.

DISCUSSION

- 33 The weight of the evidence clearly suggests the problems of the flood arose from defective installation rather than water damage. I address these issues in turn.

Installation Issues

- 34 The photographs referred to in paragraph 5 produced by Mr McDonald clearly show that there was no expansion break between the hallway and the living room, which confirms Mr Caramello's evidence on this point. The photographs also showed that where the flooring was removed, there was no expansion gap around the perimeter of the flooring as required by the Formica Installation Guide. These facts were confirmed by Mr Sortino in his statement. The photographs also demonstrate that there was no moisture barrier underneath the underlay, also required by the Formica Installation Guide.

Water Damage

- 35 Mr Sortino said that when the flooring was removed, there was no evidence of water damage or saturation.
- 36 I reject Mr Gladwell's submission that the tenant admitted that she mopped the floor with water. As Mr McDonald pointed out, the tenant in her statement in fact says:
- I have not mopped the floor excessively. I have dry mopped a hand full of times over the past 14 months.
- 37 I accept the tenant's statement at face value. There is no evidence to suggest that it is not accurate.
- 38 I find that dry mopping of the floor is not in contravention of the Formica Flooring Care and Maintenance Guide. Mr Gladwell failed to adduce any evidence that occasional dry mopping of the floor caused the flooring to absorb moisture, delaminate, swell and twist.

Findings

- 39 I find that the flooring as installed did not comply with the Formica Flooring Installation, Care and Maintenance Guide in that it did not have:
- (a) an expansion gap around its perimeter;
 - (b) an expansion gap between the hallway and the living room; and
 - (c) a moisture barrier underneath the underlay.
- 40 I therefore find that the cause of the flooring delaminating and popping was its defective installation by Mr Caramello, and as a consequence, the applicants have suffered loss and damage.
- 41 I assess the applicants' losses as follows:
- | | |
|---|------------------|
| (a) Removal and replacement of the flooring, based on the Carpet Call invoice | \$2,906.00 |
| (b) Loss of rental, based on the managing agent's evidence | <u>\$ 636.25</u> |
| | \$3,542.25 |
- 42 The balance of the applicants' claim is dismissed.
- 43 As the applicants have substantially succeeded in their claim, I will order that the respondent reimburse them the filing fee of \$209.00.

BW Thomas
Member