

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
CIVIL DIVISION  
BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. BP1423/2015

**CATCHWORDS**

Written reasons provided at the request of the Applicant showing the various amounts making up the sum ordered in its favour.

<b>APPLICANT</b>	Silk Corporate Apartments Pty Ltd (ACN 152 704 080)
<b>RESPONDENT</b>	Fadi Constructions Pty Ltd (ACN 150 521 065)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member R. Walker
<b>HEARING TYPE</b>	Written Reasons provided as requested
<b>DATE OF HEARING</b>	30 June 2016
<b>DATE OF REASONS</b>	13 January 2017
<b>CITATION</b>	Silk Corporate Apartments Pty Ltd v Fadi Constructions Pty Ltd (ACN 150 521 065) (Building and Property) [2017] VCAT 71

**REASONS FOR DECISION**

1. This proceeding came before me on 30 June 2016 for the hearing of an assessment of damages. Mr A. Ritchie of Counsel appeared on behalf of the applicant and there was no appearance on behalf of the respondent.
2. At the commencement of the hearing I made an order refusing an application for an adjournment that had been received from the respondent by mail. I then proceeded to assess the damages in an amount of \$2,373,078.88. An order was made that the respondent pay to the applicant that sum as well as the costs of the proceeding.
3. The applicant now seeks reasons for the decision that was made in its favour for the purpose, it seems, of apportioning the damages assessed between the cost of completing the incomplete works and the cost of rectifying the defective works. Those reasons are provided below.
4. Reasons are sought by the applicant and not by the respondent. However the respondent's application for an adjournment was refused for the reasons set out in the order itself namely, the lack of information in the email and accompanying medical certificate that was received, the respondent's failure to file and serve any expert report or other document relating to the assessment of damages and

the failure of the respondent to arrange for some other person to represent the respondent at the hearing.

### **Evidence**

5. The principal witness for the applicant was a Mr Dino Pizzo. He gave evidence as to contractual matters and the liquidated damages claim. Evidence concerning the quantification of the defective and incomplete work was given by a building expert, Mr Beck, whose reports were tendered. There was also an assessment by the rectifying builder, Daklan Constructions Proprietary Limited, concerning which Mr Beck gave evidence.
6. After considering the contents of Mr Beck's reports and his sworn evidence and the evidence of Mr Pizzo and the various documents tendered, I assessed the cost to complete the incomplete work at \$247,146.38, the cost to rectify the defective work at \$2,016,932.50 and the liquidated damages payable pursuant to the contract at \$109,000.00.

### **Liquidated damages**

7. Dealing first with the liquidated damages claim, the evidence established that work commenced with the pouring of the slab on 19 December 2013. The construction period specified in the contract was 365 days. There was an extension of time claim of 3 weeks which increased the construction period to 386 days.
8. Liquidated damages were quantified in the contract at \$7,000 per week or \$1,000 per day. By 14 April 2015 the work was still incomplete and the applicant's solicitors served upon the respondent a notice of intention to terminate under Clause 20.1 of the contract.
9. By a further letter dated 28 April 2015, the applicant's solicitors informed the respondent's solicitors that it intended to terminate the contract and take possession of the property on 29 April 2015.
10. Liquidated damages were claimed from the extended date for completion, which was 6 January 2014, until 28 April 2015. At the contractual rate of \$1,000 per day that amounted to \$109,000.

### **Damages and incomplete work**

11. The amount assessed in the quotation provided by Daklan Constructions Proprietary Limited for rectification works was \$2,016,932.50. The calculation of this figure is set out in great detail in the quotation, which extends for 12 pages. Mr Beck said that this amount was less than his own assessment of \$2,192,060 for the rectifying of defects in the common property and also the individual units. Since the amount to be expended by the applicant was less than the amount that Mr Beck had assessed as fair and reasonable I allowed the latter amount of \$2,016,932.50 for rectifying all of the defects. The sum is apportioned as set out in the Daklan Constructions Proprietary Limited quotation referred to.
12. The figures for defective and incomplete work that I accepted are as set out in Mr Beck's reports of 13 June 2015 and 17 August 2015. I queried with him

whether there was a double count in regard to the cleaning and the driveway but, after hearing his explanation and examining the reports more closely, I was satisfied that there was not.

13. Mr Beck said that there had been a double charge in regard to the staircase and the lift, amounting to an excess of \$2,030 in regard to the staircase and \$1,800 in regard to the lift. The total of those figures, namely \$3,830.00, was deducted from the amount of \$250,976.38 that he had assessed in order to arrive at the figure of \$247,146.38 that I found to be the total cost of completing the incomplete works.

**SENIOR MEMBER R. WALKER**