

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. BP127/2018

**CATCHWORDS**

Domestic Building – claim for loss associated with drawings – question arises about whether there was a term of the agreement about liability and where liability lies –claim dismissed.

<b>APPLICANT</b>	Buttler Engineering Pty Ltd (ACN 109 291 287)
<b>RESPONDENT</b>	Newsteel Pty Ltd (ACN 159 586 115)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	K. Campana, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	16 March 2018
<b>DATE OF ORDER</b>	17 April 2018
<b>DATE OF WRITTEN REASONS</b>	17 April 2018
<b>CITATION</b>	Buttler Engineering Pty Ltd v Newsteel Pty Ltd (Building and Property) [2018] VCAT 599

**ORDER**

For the reasons provided in writing, the Tribunal orders that:

1. The application is dismissed.

K. Campana  
**Member**

**APPEARANCES:**

For Applicant	Brett Buttler (Director)
For Respondent	Russell Birrell (Director)

## REASONS

- 1 Buttler Engineering Pty Ltd (**Buttler**) is a steel fabricator and is in the business of manufacturing and installing material used in the construction of commercial buildings.
- 2 Newsteel Pty Ltd (**Newsteel**) provides “shop drawings” which detail the dimensions and design of the steel required for a project.
- 3 A dispute has arisen between Buttler and Newsteel over responsibility for errors contained within a set of shop drawings. The errors involve the absence of bracing in the south wall of the factory and an incorrect tilt on the roof rafters.
- 4 Buttler claims it is out of pocket in the amount of \$6,181 as a result of the errors, and it says it should be reimbursed this amount from Newsteel.
- 5 Newsteel says the shop drawings should have been checked by the architect and engineer for errors. It says this check is a specific term of the contract and as such Newsteel is not liable for any costs flowing from any error.
- 6 I must determine if there was a term of the agreement about liability or, if there was no term, where liability ultimately falls.

### The Facts

- 7 The following facts are agreed.
- 8 In April 2017, Buttler contacted Newsteel and requested a set of shop drawings for structural steelwork required for the reinstatement of a commercial building damaged by fire in Fawkner.
- 9 The parties reduced their agreement to writing, in a Buttler Purchase Order, which stated –

Please supply true and correct workshop drawings for structural steelwork for the 1388 (sic) Sydney Rd Fawkner project as quoted. Drawings to include site set outs, erection drawings, holding down bolt plans, bolt lists, fitting drawings etc.

As discussed Holding Down Bolt Plan required before 2:00pm  
27.04.2017

As quoted \$4,160.00+ \$416.00 GST = \$4,576.00<sup>1</sup>
- 10 In addition to the PDF architect files provided, Newsteel requested the architect’s “CAD files”. These were sent by Buttler on 21 April 2017.<sup>2</sup> Newsteel says it used the CAD drawings and a software package to overlay and design the requirements.

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<sup>1</sup> Order Number 12591 dated 21.04.2017 from Buttler Engineering Pty Ltd.

<sup>2</sup> Email from Brett Buttler to Russell Birrell dated 21 April 2017 at 4.37pm with attachment “15-3543 cad.dwg”.

- 11 On 2 May 2017, Newsteel provided a set of draft shop drawings to Buttler to be sent to both the architect and engineer for approval –
- I have attached the shop drawings for the Sydney Rd Fawkner project which are issued for approval.<sup>3</sup>
- 12 Newsteel says it is standard industry practice for all drawings to be approved by the engineer to confirm the mechanics of what is required. It also says it was relying on the engineer’s directions that all shop drawings had to be approved before being finalised. The Structural Steel Work Notes on the project engineer’s General Notes Sheet included the following term –
52. SHOP DRAWINGS SHALL BE SUBMITTED TO THE ENGINEER AND APPROVED BEFORE FABRICATION IS COMMENCED.<sup>4</sup>
- 13 Buttler says it forwarded the shop drawings on to the builder for the approval and was met with the response - “*if the plans have been followed, then they should be right*”.<sup>5</sup>
- 14 By mid May, Buttler commenced cutting and fabricating the steel for the project. It says it did this as it had the steel in stock.
- 15 Due to a number of delays with the project by third parties (including the insurer), the shop drawings were finalised and sent by Newsteel to Buttler by email on 19 September 2017. The email contained the following –
- Please find the attached link to fabrication issue drawings for the Sydney Rd project.
- We are issuing as per your request but as we have not received any comments back from our approval issue, the fabrication and erection of members based on these drawings is at your risk.<sup>6</sup>
- 16 By 28 September 2017, an error with the drawings had been detected by the builder. It was at this point that it was discovered that the pitch of the roof on the CAD drawings was 3 degrees, but the pitch on the pdf architect drawings was described as 8 degrees.<sup>7</sup> Buttler requested Newsteel revise its shop drawings.
- 17 Newsteel sent an email to Buttler setting out their position and ongoing concerns –
- We are currently revising our drawings to show an 8 degree roof pitch and will send the revised drawings as soon as they are (*sic*) complete. I have attached a copy of the CAD file that you sent us and that we worked from.

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<sup>3</sup> Email from Russell Birrell to Brett Buttler dated 2 May 2017 at 12.10pm.

<sup>4</sup> Hawthorn Consulting Engineers, General Notes Sheet, dated 4 August 2016 for Fire Damage Reinstatement at 1383 Sydney Road, Fawkner.

<sup>5</sup> This response was from the builder. Buttler could not say if this response originated from the architect, engineer or the builder himself.

<sup>6</sup> Email from Russell Birrell to Brett Buttler dated 19 September 2017 at 9:46AM.

<sup>7</sup> JEP Consulting Group Roof Plan – Revision B – 02/8/16.

We are matching the architect's section A-A however that section appears to have conflicting geometry compared to the architect's other details.

As stated previously, you are fabricating and erecting this project at your own risk as the drawings have not been approved by the architect or engineer.

A review by the consultants might have highlighted the discrepancy. At a minimum the engineer should have reviewed the drawings for structural integrity.

Also because we have recently discovered that the architect's drawings have discrepancies, I would highly recommend you confirm all dimensions on site prior to fabrication.<sup>8</sup>

- 18 Revised drawings were provided on 2 October 2017, with Newsteel expressing further concerns –

The architect has also noted that all the dimensions on the pdf's are approximate and need to be confirmed by the builder on site so I would suggest this is done prior to fabrication.<sup>9</sup>

- 19 On 30 October 2017, Buttler issued Newsteel with an invoice for the costs it incurred in altering the portal frame rafters required for an 8 degree roof pitch instead of the 3 degree pitch in the draft shop drawings.<sup>10</sup> The amount being sought was \$4,389.00. Buttler says the work involved cutting the rafters square, adding additional material and re-bevelling the ends.
- 20 After finishing the job, Buttler says it received a call from the builder to advise that they had left off some bracing required to the south wall of the building. Buttler says this bracing was not included in the shop drawings.
- 21 On 22 November 2017 Buttler sent a further invoice to Newsteel for costs incurred in providing this bracing. The invoice was for \$1,971.20 and described the costs as including "*additional detailing, additional site works inc (sic) additional hire of scissor lift on site*".<sup>11</sup> Buttler says these costs include the workmen returning to site to install the bracing and \$220 for Mr Buttler's time in drawing the bracing.
- 22 Newsteel admits the south wall bracing was not included in the drawings. It says it thought this bracing was an error and deliberately left it off the shop drawings. It further says it was not given an opportunity to rectify the issue and would have included it in the plans at no charge.

## THE ISSUES

- 23 With no dispute about the facts, the main issue to be determined is where responsibility lies – who is liable for any additional costs incurred in

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<sup>8</sup> Email from Russell Birrell to Brett Buttler dated 28 September 2017 at 11:54AM.

<sup>9</sup> Email from Russell Birrell to Brett Buttler dated 2 October 2017 at 7:53AM.

<sup>10</sup> Invoice number 10798 dated 30/10/2017.

<sup>11</sup> Invoice number 10807 dated 22/11/2017.

rectifying the errors with the shop drawings. Newsteel says liability was a term of the agreement, while Buttler says there was no term but the nature of the agreement means Newsteel is liable. If Newsteel is liable, a further issue is the extent of that liability and how much of the claim is reasonable based on any liability.

- 24 Newsteel submits that it was a term of the agreement that it would not be liable for any errors with its drawings. It further submits that its actions in relying on, and using, the CAD drawings were reasonable, and any error should, and would, have been detected had the draft drawings been checked by the engineer and the architect. It says the review is designed to see if the drawings match the architect's intent and the mechanics of the building.
- 25 Buttler says while the engineer may not have checked the drawings, Newsteel was hired to draw them correctly and it should take responsibility for the errors.

### **Was liability a term of the agreement?**

- 26 For the following reasons, I find that there was, at a minimum, an implied term of the agreement that Newsteel would not be liable for any errors in its shop drawings –
- (a) there was an express requirement by the Engineer that any shop drawings be approved by it prior to fabrication,
  - (b) Newsteel provided the shop drawings for approval,
  - (c) Buttler relied on the draft shop drawings in circumstances where it knew they had not been approved,
  - (d) Newsteel expressly warned Buttler it would not be liable for any error as the drawings had not been checked by either the engineer or architect as required, and
  - (e) Buttler accepted the term about liability by using the final shop drawings after being given the warning on 19 September 2017.
- 27 As there was a term of the agreement that Newsteel would avoid any liability for errors with the shop drawings without the same being approved, there is no ability for Buttler to seek compensation from Newsteel for any errors with those drawings.
- 28 The application must be dismissed.

### **Where does liability fall, without any agreement?**

- 29 Even if I had not found that there was a term of the agreement excluding liability, Newsteel would not be ultimately liable for any loss flowing from the errors with the drawings for the following reasons-
- (a) The errors with the shop drawings relating to the roof rafters arose because of the inconsistencies in the documents provided by the architect. It was reasonable for Newsteel to rely on these documents,

as they were provided by Buttler for use by Newsteel, without any warning about their accuracy,

- (b) Buttler commenced fabrication of the roof rafters, and had incurred most of the loss the subject of the application, prior to Newsteel providing final shop drawings, and
- (c) The errors with the shop drawings relating to the bracing in the south wall should have been picked up by either Buttler or the contractors engaged by Buttler to install the bracing, by a cross reference check between the shop drawings and those provided by the engineer. This check would have resulted in the error being identified prior to works being finished on site, and as such no additional cost being incurred.

30 As Newsteel is ultimately not liable to Buttler for any loss incurred from errors in the shop drawings, the application would also be dismissed on this basis.

K. Campana  
**Member**