

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D298/2011

**CATCHWORDS**

Slate roof, quality of work, costs.

|                        |   |
|------------------------|---|
| <b>APPLICANTS</b>      | Mr Tino Di Paolo, Mrs Sophie Di Paolo   |
| <b>RESPONDENT</b>      | Colin Underwood trading as Quality Slate Roofs  |
| <b>WHERE HELD</b>      | Melbourne   |
| <b>BEFORE</b>          | Senior Member M. Lothian  |
| <b>HEARING TYPE</b>    | Hearing   |
| <b>DATE OF HEARING</b> | 16 and 17 February 2012   |
| <b>DATE OF ORDER</b>   | 17 February 2012  |
| <b>CITATION</b>        | Di Paolo v Underwood trading as Quality Slate Roofs (Domestic Building) [2012] VCAT 214 |

**ORDERS**

- 1 The respondent must pay the applicants \$3,000 for scaffold, stayed until the sum of \$10,801.82 plus interest and costs awarded to the Respondent in the Magistrates Court is either paid, or the judgement is set aside and a new order made.
- 2 The applicants must pay costs to the respondent being the cost to him of his expert's attendance at site and at the hearing today, and for the preparation of his expert report.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

|                |                             |
|----------------|-----------------------------|
| For Applicants | Mr A. Scriva of Counsel     |
| For Respondent | Mr A. Beck-Godoy of Counsel |

## REASONS

- 1 Mr and Mrs Di Paolo, the applicants, are the owner-builders of a two-storey brick veneer French provincial home at 2A Alexandra Avenue, Canterbury. Mr Underwood, the respondent, was the slater.
- 2 There have been disputes concerning the work undertaken by the respondent and concerning sums due by the applicants to the respondent. In a separate proceeding in the Magistrates Court, the respondent has obtained an order for \$10,801.82 plus interest and costs for sums outstanding under the slating contract. The amount awarded has not been paid and might be the subject of further legal proceedings, but not before the tribunal.
- 3 The applicants' claim is to remove and replace the bell cast slate work done at their home by the respondent. Although no amount was included in the pleadings, at the commencement of the hearing on 16 February 2012, Mr Scriva of Counsel for the applicants, said that the claim is \$27,720 to remove and reinstate the slate, and scaffold hire of \$13,720. Surprisingly, no evidence of quantum was produced.

## HISTORY

- 4 The parties agree that the respondent gave a quote to the applicants dated 10 March 2010 for \$23,489.27. The quotation called for "China Emperor roof slate". The job ran into some difficulties. The first was that the roof trusses installed by others were not adequate to provide the right slope for the slates and the second was that when the first batch of slates was installed it became obvious to both parties that the colour was unacceptably patchy. The respondent arranged for the supplier to credit back the cost of the China Emperor slates, and those slates were replaced with others. It is the other slates and their method of laying which are the subject of this proceeding.

## CREDIBILITY

- 5 The respondent impresses me as a careful and accurate witness. Because of contradictions and some evasions in the evidence of both of the applicants, where there is a conflict I prefer the evidence of the respondent to that of the applicants.

## ALLEGED DEFECTS

- 6 The applicants alleged in their points of claim that there are defects in accordance with an inspection report of Mr Limburg of 23 September 2011. The matters raised by Mr Limburg are that some of the courses of slates are irregular, that "the slate roof tiles were not fixed to the timber battens in the same plane", "the slate roof tiles were not all the same size at the hips", there is leaking above a window on the south face of the home and there are unacceptable variations in colour. Surprisingly, Mr Limburg was not called by the applicants to give evidence.

## Irregular courses

- 7 The complaint concerning the regularity of courses is with respect to the top course of slates. The roof is a complicated one with a single profile to each

of the south and east elevations, but a total of seven to be north and west elevations. This roof has a total of seven hips and three valleys. The front section, to the west of the home, has higher eaves than the remainder of the roof. It necessarily follows that there will be a difference in the slating between that section and the remainder of the roof. The respondent has used slates of smaller depth on the front part of the roof at the top than on the remainder of the roof. I accept the expert evidence of Mr Simpson, called by the respondent, that this arrangement of the slate is not defective. Further, I saw this difference at the site inspection of 17 February 2012 and the slate roof, including this aspect of it, appears to have been built in a tradesman-like manner.

### **Plane of slate fixing**

- 8 Mr Simpson said he did not know what Mr Limburg was referring to, and neither do I. Had Mr Limburg been called to give evidence, this might have been resolved.

### **Hips**

- 9 In his report, Mr Limburg said:

The slate roof tiles were not all the same at the hips. This caused the slate roof tiles to appear irregular and out of alignment at the hips.

- 10 Mr Limburg seemed to be pointing out that the respondent has used "a slate and a half" instead of traditional single slates, as used on the remainder of the roof, at the hips. I accept the evidence of the respondent that the use of "a slate and a half" is a superior method of achieving a watertight roof to the alternative method of placing some slates on their sides, described by him as "web wise". I do not find that there is a fault in this aspect of the work.

### **Leaking**

- 11 Mr Di Paolo pointed out an area above a window on the south face of the home where the colour of the render above the window is different to the remainder of the render. I inspected this area on-site and Mr Simpson used a moisture meter to determine whether the area was damper than other areas of the render. I am satisfied that it is not, although there was rain near the site, and possibly at the site, last night. I cannot be satisfied that the mark in the render is relevant to leaking. Further, even if I were so satisfied, I could not be satisfied that it is due to leaking of the slate roof. I find that the applicants have failed to prove this alleged defect.

### **Colour**

- 12 I am not satisfied that the slight variations in colour of some of the slates visible on site, and in the photographs produced by the applicants on site, are sufficient to render the installation of this natural product other than in accordance with standards of reasonable workmanship.

### **The quality of the roof as a whole**

- 13 In accordance with the evidence of the respondent, I do not accept the evidence of the applicants that they showed the respondent photographs or took him to see other buildings with slate roofs. I accept the evidence of Mr Simpson that the respondent's work at the applicant's property was not just of reasonable quality, but is excellent. The work of slating a bell cast roof is very difficult and has been undertaken so that the result is admirable.

### **SCAFFOLD CREDIT**

- 14 The parties agree that when the China Emperor slates were removed the respondent told the applicants that he would seek reimbursement from the supplier for his labour, the price of the slates and a contribution to the hire of the scaffold for the extra period necessitated by removal and replacement of the slates. It is by no means clear that there was agreement between the parties that the applicants would only receive compensation for additional hire of the scaffold if this sum were received by the respondent from the supplier.
- 15 The Respondent said in evidence that he does not "want any more than I am entitled to" which includes crediting the applicants \$3,000 for the scaffold, which he considers fair for six weeks between the date upon which removal of the China Emperor slate commenced to the point in re-slating equal to that reached using China Emperor slate. I accept the evidence of the respondent that other work was being undertaken for the applicants by others using the scaffold, for at least some of the time that his work was delayed, but find that the allowance of this \$3,000 is reasonable. I find that if no offer had been made by the respondent, the applicants would have been entitled to the reasonable cost incurred by them of additional hire of the scaffold.
- 16 As the judgement sum in the Magistrate's Court has not been paid, I order that the respondent pay the applicants \$3000, stayed until the judgement sum is either paid or the judgement is set aside and the new order made.

### **COSTS**

- 17 I heard Mr Beck-Godoy of Counsel for the respondent and Mr Scriva on the question of costs after the substantive decision was pronounced.
- 18 I find that in accordance with section 109 (3)(c) of the *Victorian Civil and Administrative Tribunal Act 1998*, in circumstances where the applicants' claim against the respondent for defective works is without merit and the applicants chose not to adduce evidence from their expert upon whom they had relied to bring their claim, it is fair that the applicants should pay the respondent the cost of his expert report and for the attendance of their expert at site and at the hearing today.

**SENIOR MEMBER M. LOTHIAN**