

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D853/2007

CATCHWORDS

Domestic Building List – claim for balance of price – whether the respondent was misled – work done in accordance with quotation

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|------------------------|---|
| APPLICANT | Eric Jones Stairbuilding Group Pty Ltd (ACN 005 412 162) |
| RESPONDENT | Casabene Plumbing & Drainage Pty Ltd (ACN 111 469 179) |
| WHERE HELD | Melbourne |
| BEFORE | Robert Davis, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 27 March 2008 |
| DATE OF ORDER | 27 March 2008 |
| CITATION | Eric Jones Stairbuilding Group Pty Ltd v Casabene Plumbing & Drainage Pty Ltd (Domestic Building) [2008] VCAT 967 |

ORDER

The respondent is to pay to the applicant the sum of \$7465.00 forthwith.

Robert Davis
Senior Member

APPEARANCES:

For Applicant

Ms D Auld

For Respondent

Mr P Casabene

REASONS FOR DECISION

Note: These written reasons consist of an edited transcription of reasons given orally at the conclusion of the hearing.

- 1 The applicant, a staircase manufacturer, is claiming the sum of \$8465.00, being the balance allegedly owed by the respondent to the applicant for a staircase which the applicant supplied and installed for the respondent.
- 2 The respondent is a plumbing business and it acquired the freehold of Factory 4, 23 Lentini Street, Hoppers Crossing (the premises). In 2007 before it could move into the premises, various alterations and renovations needed to be undertaken which included a staircase. After having examined various staircase makers' internet sites and pamphlets, the respondent asked the applicant for a quotation, and there was a meeting held at the house of the respondent's director where various staircases were discussed.
- 3 There is a conflict of evidence about what was actually said at this meeting. The respondent says that they wanted a steel spine staircase all the way up. The applicant says that that type of staircase would have cost in excess of \$17,000 inclusive of GST. It says that the respondent did not want to pay that money and, indeed, the respondent agrees that there was some complaint about the price. The applicant says that, as a result, a different staircase was arranged which did not have a steel spineback all the way up but had closed string risers and the wall would be moved closer to the staircase.
- 4 I am unable to make findings as to what was actually said in this conversation; as to whether there was insistence on a steel spineback staircase as the respondent says or there was an acceptance that that would not happen as the applicant says. However, subsequent to that meeting, a quotation, quoting the sum of \$14,300, was sent to the respondent by the applicant and that quotation stated relevantly as follows :

18 risers. Lower flight to be steel spineback with open risers to the landing. Top flight to be closed string risers with balustrade to the inside.
- 5 The respondent, through its Director Mr Casabene and his wife and secretary, says that they did not understand what string risers were. Had they understood, they would never have agreed to the quotation. At the bottom of the quotation in large writing it states:

CONTACT: For any further information concerning this quotation, please contact Jason Stafford.

- 6 I understand that Ms Jacobs, the secretary of the respondent, did contact someone from the applicant and other matters were discussed in relation to extras but there was certainly no question as to what closed string risers were. One would have thought if people in business did not understand something in a quotation they would have queried the same, particularly, in light of the fact that I was told by the respondent that they were firm in their idea that there would be a steel spineback the whole way up. Looking at the quotation, it is clear that the steel spineback is only up to the landing. Therefore, I think it is quite surprising that that matter was not queried. In any event, a deposit of \$6000 was paid by the respondent to the applicant on 24 July 2007.
- 7 A final document whereby the respondent signed off on the job was signed on 15 August 2007 by Mrs Casabene – Mr Casabene was in China at the time. Certain extras were added to it. Further, Mr Miller (applicant's employee) said in evidence that the type of staircase that had a steel spine all the way up would have cost approximately \$17,500 and this quote is \$14,300. In these circumstances, I find that the respondent should have known that they were not getting steel spineback risers all the way to the top. The quote is quite clear that steel spineback risers only go to the landing. It says that the top flight was to be closed string risers. I can understand that the respondent may not have known what string risers were but it is clear that they are something different from steel spineback risers. Under those circumstances, I find that the job was done according to the quotation except for some matters which I will shortly refer to. I do not accept that the respondent did not understand the whole of the document and certainly not to the point where it was misled.
- 8 There were a number of faults rectified with the staircase but there still appears to be sharp edges, the handrails are too far apart by some 20mm, and there are gaps in the staircase. There were also some gaps in the wall, which I am now told have been fixed.
- 9 At one stage the applicant agreed to reduce the amount owing pursuant to the quotation by \$1000, from \$8465 to \$7465 because of certain work which was not carried out. However, that was not accepted by the respondent. It is common ground that the balustrade is 20mm too close to the wall and, as such, that would need to be moved. The only price I have been given for that rectification is \$300, so I accept that that would be the price. There is also the other matters which would indicate to me that there is still some more work to be carried out. Therefore, I will allow including the \$300, the sum of \$1000 for all the work that is necessary to be carried out to complete the staircase. That includes the \$300 to which I have referred.
- 10 There was considerable discussion during the hearing that the job was delayed. That is, the whole building job of the premises and, as a result, the respondent suffered because it had to pay rent longer than it would have otherwise. However, in the original quotation it is stated :

DELIVERY: Present delivery is approximately 3-4 weeks from date of final measurement.

- 11 As I have already said, the job was signed off on 15 August 2007 even though the deposit was paid on 24 July 2007. The job commenced at the beginning of September and in fact took the whole month of September to complete but that was in part because there were discussions about the actual job. Therefore, I do not find any breach by the applicant in relation to the time taken to complete the staircase.
- 12 Under these circumstances, having made the deduction of \$1000 from \$8465 (the amount claimed), I will order that the respondent pay the applicant the sum of \$7465 forthwith.

Robert Davis
Senior Member