

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D537/2010

CATCHWORDS

Work and labour done – concreting - work not done in a proper and workmanlike manner – result unsightly and requiring replacement – cost of replacement awarded

APPLICANTS	John Franklin, Rachel Franklin
FIRST RESPONDENT	Cosimo Migliore t/as John & Coz Concreting
SECOND RESPONDENT	Giovanni John Migliore t/as John & Coz Concreting
WHERE HELD	Melbourne and on site – 7 Trafalgar Street, Ferntree Gully
BEFORE	Senior Member R. Walker
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	3 November 2010 and 17 January 2011
DATE OF ORDER	25 January 2011
CITATION	Franklin v Cosimo Migliore trading as John and Coz Concreting and Anor (Domestic Building) [2011] VCAT 99

ORDER

Order that the respondents pay to the applicants \$13,880.00.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicants

In person

For the Respondents

In person

REASONS

Background

- 1 The applicants are the owners of a house in Ferntree Gully. The respondents are carrying out business as concrete contractors under the name "John and Coz Concreting".
- 2 In December 2009 the respondents carried out concreting work on the site path and rear entertainment area of the house around the applicants' swimming pool for an agreed price of \$7,200.00. The price has been paid in full.
- 3 The finish of the concrete was a faux brick pattern impressed on the wet concrete with stencils and coloured with some proprietary materials.

The defects

- 4 Immediately after the laying of the concrete the applicants notice circular marks in the concrete caused, they suspected, by the applicants placing the drum of colouring material on the wet concrete so that it would leave an impression. They also noticed that the coating bricks around the swimming pool had become chipped and the edge of the concrete where it abutted a retaining wall was finished carelessly.
- 5 They contacted the respondents who came out and inspected the work and no remedial work was done.

The hearing and inspection

- 6 This proceeding was brought in July 2010 and the matter came before me for hearing in November 2010 as a small claim.
- 7 After evidence was given by the parties I adjourned the matter to an on-site hearing where I heard further evidence from the parties and examined the concreting work myself. The applicants pointed out various defects and the respondents had an opportunity to reply to the allegations made.

Findings

- 8 I find the following defects:
 - a There are numerous places in the concrete where there is a circular mark impressed into the surface of the concrete. These marks were caused, it is now acknowledged, by the drum of material the respondents used for the finish to the faux bricks being placed upon the concrete before it was set.
 - b No isolating material has been used to separate the concrete from the house, the side wall and the retaining rock wall. As a result, there has been some spalling and breakage of the concrete around one pillar of the house;

- c In a number of places the saw cuts made by the respondents are insufficiently deep. The concrete has cracked parallel to one of these cuts. This is to be contrasted with another cut between the pillar of the house and the side wall where the concrete has cracked, as it should have, along the bottom of the cut;
 - d The water is ponding in two positions. The ponding away from the house towards the edge of the concrete where it drains onto the lawn is not significant, but the ponding nearer the house is.
 - e There is a strip drain grate between the swimming pool and the house but the fall in the concrete to this drain is inadequate so that water falling upon the concrete does not run into the drain;
 - f There is the impression of shoes in the concrete in several positions;
 - g In a significant area of the concrete the concrete has spalled where the template has been removed, taking some of the concrete with it. As a result there is a rough and uneven finish in the brick pattern.
- 9 During the inspection the respondents suggested that the applicants had used some paint or some other substance in order to colour the rings in the surface of the concrete so as to make them more noticeable. The applicants denied having done so and invited the builders to conduct tests of the material to be found in the bottom of the groove. The colouring material used on the bricks appears to be dark underneath and a yellowy substance on top. The colour at the bottom of the grooves is consistent with the rim of the bucket having penetrated the top surface into the darker substance underneath. In the light of the sworn evidence of the applicants that they did not colour the bottom of the rim I do not find that they did so.

Conclusions and order

- 10 By reason of the defects listed I find that the work has not been done in a proper and workmanlike manner and the result is so unsightly that the work will have to be redone.
- 11 The applicants have produced a quotation in the sum of \$13,880.00 to pull up the concrete and replace it. The respondents said that if they were to re-do the job they would charge \$12,622.50. I accept the figure in the applicants' quotation.
- 12 Accordingly, I order that the respondents pay to the applicants the cost of rectifying the defective work namely, \$13,880.00.

SENIOR MEMBER R. WALKER