

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP166/2017

CATCHWORDS

DOMESTIC BUILDING: Section 40 and 41 of the *Domestic Building Contracts Act 1995*; Breach of contract; termination by owner.

APPLICANT	Mr Saurabh Garg
RESPONDENT	Singh Homes Pty Ltd (ACN 138 208 385)
WHERE HELD	Melbourne
BEFORE	J Pennell, Member
HEARING TYPE	Hearing
DATE OF HEARING	20 April 2017
DATE OF ORDER	6 July 2017
CITATION	Garg v Singh Homes Pty Ltd (Building and Property) [2017] VCAT 964

ORDER

- 1 The proceeding is dismissed.
- 2 Having considered s 109 of the *Victorian Civil and Administrative Tribunal Act 1998* there is no order as to costs.

J Pennell
Member

APPEARANCES:

For Applicant	Mr Garg, in person
For Respondent	Ms Khan, Solicitor

REASONS

- 1 This matter was listed before me for hearing on 20 April 2017. At the conclusion of the hearing I gave oral reasons for my decision. The Applicant subsequently made a request for written reasons.
- 2 These are the oral reasons provided by me at the hearing having been amended for the purposes of being grammatically correct.

FACTS

- 3 In or about November 2016 the Applicant and the Respondent entered into agreement by which the Respondent agreed to draft plans and specifications for the Applicant for the construction of a home in Rockbank in the State of Victoria for the total amount of \$3,000.00.
- 4 The Respondent is a builder and is in the business of constructing residential homes on a fixed price basis.
- 5 It says that before committing to a fixed price for the construction of a home a large amount of work is required to be done to determine the cost of building any particular home. Therefore, to provide a fixed price building contract it requires that the plans and specifications be finalised. It charges a non-refundable deposit to draft all plans and specifications. A customer is not obliged to enter into a building contract once the plans and specifications have been completed but, if he or she does, then the deposit amount is deducted from the building contract price.
- 6 In this case there was an initial meeting between the Applicant and a representative of the Respondent in or about November 2016. The Applicant had his own plans but agreed that the Respondent would re-draft his plans and specifications so that it would be able to provide the Applicant with a fixed price building contract for the construction of the home.
- 7 On or about 16 November 2016 the Respondent sent the Applicant an invoice for \$3,000.00 ('the deposit') to draft the plans and specifications. This amount was paid by the Applicant. The invoice expressly stated that the deposit was non-refundable.
- 8 By an email dated 24 January 2017 the Applicant terminated the agreement and demanded return of the deposit. The Applicant says that he is entitled to return of the deposit due to the fact that he has not received the final plans and specifications from the Respondent.
- 9 The Applicant does, however, accept that the Respondent is entitled to be remunerated for all work performed on a quantum merit basis, which he estimates at \$500.00.
- 10 The Respondent denies that the Applicant is entitled to a refund specifically by reason of the fact that it was a term of the agreement that the deposit was non-refundable.

- 11 Nevertheless the Respondent says that even on a quantum merit basis the actual cost of drafting the Applicant's plans exceeded the deposit amount. It says that save for the final colour specifications that were due to be finalised at a meeting with the Applicant on 28 January 2017, after the date of termination, the plans and specification have been completed and that it remains willing and able to supply the plans and specifications to the Applicant free from any obligation to enter into a further building contract for construction of the home.
- 12 It was generally agreed between the parties that the work performed by the Respondent included the taking of initial instructions, all amendments to the plans and specifications as requested by the Applicant, by email and telephone, and amendments requested by the Applicant at two additional meetings conducted at the Respondent's office. It was agreed that the plans and specifications had been amended by the Applicant a total of 5 times. While I was not provided any evidence as to the costs of such works, it does appear that the work described would have been in excess of the \$500.00 estimated by the Applicant. Therefore, in all the circumstances it appears that the Respondent has completed the works in accordance with terms of the agreement and is entitled to the full amount of the deposit paid.
- 13 The Respondent has then proceeded to perform the drafting service at the deposit price to the point that the plans and specification have been all but completed. In the absence of any evidence as to the precise value of the work performed by the Respondent it is difficult to determine on a quantum merit basis if any amount of the deposit should be returned to the Applicant. Given that the Respondent had completed the plans and specifications, including all the Applicants amendments, it appears that the works had been completed and as such the Respondent is entitled to retain the full deposit amount.
- 14 In any event it was expressly stated that the deposit was non-refundable. By paying the \$3,000.00 deposit the Applicant has accepted the terms of the agreement.

CONCLUSION

- 15 For the reason provided herein I find that it was a term of the agreement that the deposit amount of \$3,000.00 was non-refundable and as such the Applicant's claim is dismissed.
- 16 Having considered sections 109 and 115B of the *Victorian Civil and Administrative Tribunal Act 1998* I make no order as to costs.

J Pennell
Member