

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D748/2006

CATCHWORDS

Work and labour – implied term that the work be one in a proper and workmanlike manner – difficult job
– term nonetheless implied

FIRST APPLICANT	Marshall Horne
SECOND APPLICANT	Michelle Horne
RESPONDENT	Graham Todeschini
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	23 January 2007
DATE OF ORDER	23 February 2007
CITATION	Horne v Todeschine [2007] VCAT 339

ORDER

Order the Respondent to pay to the Applicants \$9,999.00.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicant	Mr Horne in person
For the Respondent	Mr Todeschini in person

REASONS

The agreement

- 1 The Applicants Mr and Mrs Horne (“the Owners”) engaged the Respondent, Mr Todeschini, (“the Tiler”) to carry out some tiling work to the floor of their house in January 2006.
- 2 The work involved laying very large tiles (600 x 600mm) to a fibro cement substrate that had been laid by a builder (“the Builder”) who was renovating the house.
- 3 The tiles were supplied by the Owners but the adhesive and grout were supplied by the Tiler.

The work

- 4 The Tiler laid one row of tiles in the dining room and then started laying the second row but had problems getting those tiles to sit at the same level as those in the first row. He says that he explained the problem to Mr Horne who asked him to do the best he could. The Tiler then proceeded to lay the rest of the tiles. When they were all laid the Owners paid him. He came back some days later and grouted the tiles.

The complaint

- 5 A couple of months afterwards the Owners complained to the Tiler about the quality of the work. A meeting was arranged between the Owners, the Builder and the Tiler but the Owners did not attend. At a subsequent meeting the Builder was not present but the Owners showed the Tiler the defects in the work. The Tiler acknowledged the complaints but said that the problems arose because the floor surface beneath the tiles was not level. Correspondence then ensued between the parties but no agreement could be reached and this application has been brought.
- 6 The defects are set out in a report by a Mr Hegarty, a building consultant, who says that the underlay for the tiles was properly installed and that the problem was with the laying of the tiles, which he said was defective.
- 7 The principal problem is that, where the tiles abut, they are not at the same level. Also, the joints vary in width and, according to Mr Hegarty, the grouting is inadequate.

Inspection

- 8 After hearing oral evidence and reading Mr Hegarty’s report I visited the property and inspected the floor in the presence of the Owners and the Tiler. I found that Mr Hegarty’s criticism of the work was justified.
- 9 The tiles are of white porcelain, about ten millimetres thick and with a gloss surface. They have been laid from the front door down the hallway into the main living area. There is glancing light on the floor surface from glass inserts in the front door and from side windows in the house and the back

door. This shows up the irregularities very clearly. The end result is quite unsightly.

- 10 I inspected a section of the substrate where a tile had been removed and found that the adhesive on which the tile was bedded was quite thin. I asked the Tiler why he had not taken up any irregularities in the substrate in the adhesive. He said that was not possible because the irregularities in the floor were too great. This is denied by the Owners and my inspection of the section of substrate that has not yet been tiled showed it to be level and apparently well laid, so far as I could see. I note that this was also Mr Hegarty's observation.

Conclusion

11. I am not satisfied that the condition of the substrate accounts for the irregular tile surface that I saw on the inspection, nor am I satisfied that, in the conversation referred to by the Tiler, the Owners agreed to accept "the best that he could do".
12. It is an implied term in any contract for the performance of work and labour that the work will be carried out in a proper and workmanlike manner. I accept that laying tiles of this size, particularly in such a well lit area, is difficult but if the Tiler undertakes the task he is required to do it in a proper and workmanlike manner. I am not satisfied that the tiles were laid in a proper and workmanlike manner and I accept Mr Hegarty's expert opinion in this regard.
13. I accept that the tiles will have to be pulled up and new tiles laid. The owners have tendered quotations from the Builder to remove the defectively laid tiles and the substrate, from a tiler to lay new tiles and from a tile supplier to supply the replacement tiles. These total well over \$10,000.00 but the claim has been limited to \$9,999.00.
14. I am satisfied that the damages suffered by the Owners from the breach exceed the amount claimed and so an order will be made that the Respondent pay to the Applicants the sum of \$9,999.00.

SENIOR MEMBER R. WALKER