

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D1244/2013

CATCHWORDS

Work and materials – work not completed – work not done in a proper and workmanlike manner – concrete to be replaced – work and materials of no value – order for moneys paid to be returned

APPLICANTS	Mr Robert Hurdle, Amanda Hurdle
RESPONDENT	Mr. Daniel Commerford t/as DC Concreting
WHERE HELD	Melbourne
BEFORE	Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	23 January 2014 and On site on 17 February 2014
DATE OF ORDER	19 March 2014
CITATION	Hurdle v Commerford trading as DC Concreting (Domestic Building) [2014] VCAT 282

ORDER

Order the Respondent to pay to the Applicants \$6,600.00.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicant	In person
For the Respondent	In person

REASONS

Background

- 1 The Applicants are the owners of a house in Winter Court Mill Park. The Respondent is a concreter.
- 2 On 23 January 2013 the Respondent quoted to concrete an area at the rear of the Applicants' house with a sealed slate impression pattern and also to re-seal the driveway for a total cost of \$9,800.
- 3 The quotation contained the following inclusions:
 - F62 mesh
 - 25 mpa concrete
 - Sealing and driveway sealing
 - Compacted crushrock base
 - Steps in backyard
 - Drainage
 - Dingo hire and bins
- 4 If the Owners removed the pavers that were there, the price would be reduced by \$500.

Payments

- 5 The Applicants accepted the Respondent's quote and, on 12 August 2013, they paid \$2,000 into the Respondent's bank account.
- 6 On 14 August 2013 the Respondent asked the Applicants for some more money to pay the concrete truck that was due to come the following day and also to pay some of his workers. The Applicants transferred another \$3,000 into his bank account.
- 7 On the following day, 15 August 2013 the Respondent again said that he needed money for the concrete truck. He gave Mr Hurdle the telephone number of the concrete supplier. Mr Hurdle rang the supplier, gave them his credit card number and authorized them to debit it for \$850 worth of concrete. He subsequently discovered that \$1,600 worth of concrete was debited to his credit card by the supplier.

The work

- 8 It appears that the concrete was poured on 15 and 16 August. Upon inspecting the work on Saturday 17 August the Applicants discovered that it was not level. It was lower in the middle under the pergola, high near the fence and high again near the house.
- 9 The air conditioner, which the Respondent had said would be lifted and concreted under had been left in place and the concrete had been laid

around it. Further, there was no drain near the steps, although drainage had been included in the quote.

- 10 They took photographs and sent them to the Respondent. Discussion then ensued but no agreement was reached. In the course of these discussions the Respondent claimed that he had spoken to Mr Hurdle at the time of laying about the levels and Mr Hurdle had said that it would be all right. He said that all of the levels were correct and that when he put in the saw cuts the water would drain off through the saw cuts.
- 11 The discussions became heated and threats were made by the Respondent. The Respondent then said that he would do no more work. He collected his equipment and departed.
- 12 The concrete had no saw cuts put into it, it was not sealed, the driveway was not sealed and no drains were installed. All of these things were required by the quotation. There was also a considerable amount of rubbish left behind.
- 13 The Applicants then brought this proceeding.

The hearing

- 14 The matter came before me for hearing on 23 January 2014. After hearing evidence from both sides I adjourned the matter to an on-site hearing on 17 February 2014. The parties pointed out various things and I inspected the quality of the work generally.
- 15 On looking at the work the general standard of workmanship is poor. It seems to me that little thought was given to the levels to be achieved before the concrete was poured. The quotation included putting down crushed rock and concrete was to be laid to the bottom of the plinth boards.
- 16 Any area of concrete creates an impervious surface which will need to be drained of water when it rains. The quotation included drainage and there is none. The Respondent told me that it was intended to drain by running down the path towards the garage. I do not believe that is what was meant by "drainage". Water falling on the rear pergola area is directed by the slope of the concrete under the pergola where it ponds in the middle.
- 17 I asked the Respondent why he had not put in drains and he said that there were no drain pipes under the ground. When I pointed out the down pipes in the area he said that they were directed under the house. The Applicants denied that and on inspecting the down pipe I think that is unlikely.
- 18 The Respondent suggested that when he put in the saw cuts, the water could drain away along the saw cut. I have never heard such a suggestion as that made before. It is certainly not the way concrete is intended to drain nor is it the purpose of creating a saw cut.
- 19 There being no saw cuts or construction joints that I could see the concrete has cracked in a number of places.

- 20 The concrete is noticeably out of level adjacent to a landing by the back door. The Respondent simply concreted around the air conditioner.
- 21 I agree with the Applicants that the work is quite unsatisfactory and will need to be replaced.

Order to be made

- 22 The Applicants have obtained a number of quotations to pull up and re-lay the concrete varying from \$7,040 to \$9,790 but the extent of the work included in these quotations is unclear. The cheapest quote does not include the re-sealing of the driveway which was within the Respondent's quote.
- 23 The Applicants have paid \$5,000 to the Respondent and \$1,600 for concrete, making a total of \$6,600. The job has to be re-done and so they have nothing to show for this money. Because what the Respondent has laid needs to be removed the work and materials he has supplied are worthless. The most appropriate course is to order the Respondent to repay to the Applicants the sum of \$6,600 they have paid.

SENIOR MEMBER R. WALKER