

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP1495/2017

CATCHWORDS

Domestic Building – claim for works undertaken to prepare site for concreting – homeowner raises issue with the work, terminates contract and claims for reduction for damage caused to the premises – claim by concreter reduced.

APPLICANT	Peter Huybers t/as Peter's Concreting (ABN 24 921 742 970)
RESPONDENT	Gregory Chesser
WHERE HELD	Melbourne
BEFORE	K. Campana, Member
HEARING TYPE	Hearing
DATE OF HEARING	13 February 2018
DATE OF ORDER	1 March 2018
DATE OF WRITTEN REASONS	1 March 2018
CITATION	Huybers v Chesser (Building and Property) [2018] VCAT 315

ORDER

For the reasons provided in writing, the Tribunal orders that:

1. Gregory Chesser must pay Peter Huybers the sum of \$7,909.00.
2. Gregory Chesser must reimburse Peter Huybers the application fee of \$209, pursuant to section 115B of the *Victorian Civil and Administrative Tribunal Act 1998*.

K. Campana
Member

APPEARANCES:

For Applicant In person

For Respondent In person

REASONS

- 1 Peter Huybers (**the Concreter**) runs a concreting business known as Peter's Concreting.
- 2 For several days in April and May 2017 he carried out works on a property owned by Gregory Chesser (**the Owner**), before the contract was terminated and he was asked to leave the site.
- 3 The Concreter seeks the costs associated with the works undertaken in the amount of \$10,824.
- 4 The Owner says the value of the works completed is only \$4,970 and should be further reduced for damages caused to his property in the amount of \$3,333.15. He says he accepts he owes the Concreter the amount of \$1,636.85.
- 5 I must determine the following issues in dispute:
 - (a) What works were completed?
 - (b) What was the value of the works completed?
 - (c) What damage, if any, was caused to the property and what is the reasonable cost of rectification?

The Hearing

- 6 The matter came on for hearing before me on 13 February 2018. Mr Huybers and Mr Chesser attended in person and each had a female companion with them. At the start of the hearing, given the additional presence in the hearing room, I asked whether anyone, apart from the parties themselves, would be giving evidence. I was told they wouldn't be. Despite this there were several attempts by those present to assist the parties with their recollection of events and the presentation of documents and photographs. I have not taken this "assistance" into account.
- 7 At the end of the hearing, I reserved my decision to consider the evidence provided.
- 8 After the hearing had concluded and later that same day, the Concreter sent additional material to the Tribunal to support the contentions made at the hearing. I have not considered these documents as the hearing was concluded. Both parties were given an opportunity to present all of their evidence during the course of the hearing.

What works were completed?

- 9 It is agreed that the Concreter was approached by the Owner in February 2017, and met him on site to discuss his requirements. The Owner wanted to have various concreting works carried out to an investment property where his daughter was living and running a business, including the removal and replacement of front and back steps, new paths and a concrete

driveway. Following a number of discussions, the Concreter issued the Owner with a quotation for \$28,050.

- 10 The Concreter says that the Owner agreed and accepted this quotation on or about 9 March 2017. The Owner says that after receiving the quote he advised the Concreter that the quote was too much, and he needed the work completed within three to four weeks. He says the Concreter reduced the price to \$23,000 and agreed on the time schedule.
- 11 As the contract was terminated during the course of the works and the Concreter now seeks payment for the value of the works undertaken (“*quantum meruit*”), whether or not the agreed price was \$28,000 or \$23,000 is irrelevant.
- 12 The Owner says that “time was of the essence” to have the works carried out. I accept this was the case when the contract was entered into. However, over the course of several months, the Owner agreed to the various delays by the Concreter with works not commencing until mid-April.
- 13 On 9 May 2017, the Concreter had removed existing concrete steps, paths and driveways, excavated the area and had boxed it up ready to pour the concrete.
- 14 On this afternoon, the Owner attended on site and took issue with damage caused to the house and the position of both a path and the front and back steps.
- 15 The Concreter made offers to rectify the damage and change the position of the path and steps, but the Owner terminated the contract.
- 16 The Concreter responded by removing all his materials from the site and issuing an invoice for the works completed to that date.
- 17 Photographs taken before the works started and taken on the day the contract was terminated were produced at the hearing.
- 18 On the basis of the photographs and the evidence of the parties, I find that by 9 May 2017, the Concreter had demolished and prepared the front driveway, yard, path and steps, and the back driveway, pergola, steps and paths. I further find that these areas were boxed and that steel had been ordered for the next day.
- 19 The Owner says the steps were at heights that were not part of the agreement. I prefer the evidence of the Concreter who says the steps were as agreed allowing for a landing from the inside of the house stepping out, and the steps were a height within industry standards that accommodated the fall of the land. The evidence of the Concreter is more probable as being correct, with the existing steps removed in their entirety both at the front and back, and replaced with steps that provided a larger landing and a safer entry and exit point from the home. It is also consistent with the need for the Concreter to remove some brickwork and part of the tracks for the

external shutters on the backdoor. As such I find that the works undertaken for the steps were in accordance with the agreement.

- 20 The Owner further says that the path in the backyard was in the wrong position and should have been further away from the back shed. The Concreter acknowledges this, but says he offered to rectify this before the contract was terminated. The claim for works undertaken will have this item removed as not being in accordance with the scope of works as agreed.

What was the value of the works completed?

- 21 The Concreter estimates he was on site for five days, with two labourers, and incurred costs associated with the hire of excavating and tipping equipment and tip fees. He seeks \$10,824 (which includes GST). He says as the job was based on a fixed quote he did not keep timesheets of the days spent on site. His invoice provides a breakdown of the value of the works.
- 22 The Owner says that the Concreter was on site for only two days. He says he attended the house nearly every day and knows that the Concreter did not attend for five days. He says he estimates the true value of the works to be \$4,970, based on other quotes received and what it cost to have the work completed.
- 23 Despite the claims by the Owner that he was in attendance at the property every day and his claims that the tradesmen were only on site for two days, I prefer the evidence of the Concreter which is consistent with the breakdown provided on the invoice, issued the day after the contract was terminated. However some of the \$3,400 (excluding GST) for labour should be removed as it includes time spent by the Concreter for spreading the soil removed from the Owner's property at the Concreter's own home. The Concreter spent several hours spreading the top soil on his own property. The labour costs will be reduced by \$500 to \$2,900 (excluding GST) as being a reasonable charge for time spent on works that benefitted the Owner.
- 24 The Owner challenges the value of the costs associated with materials and the hire of equipment, but has not provided any evidence which supports the contention that these amounts are not reasonable.
- 25 I accept that the amounts as charged on the invoice for equipment hire and materials were incurred and were reasonable for the works undertaken. I have deducted the amount charged for the plinth boards and timber which the Concreter removed from the Property and which the Owner has not received the benefit of (valued at \$350, excluding GST).
- 26 The Owner also disputes the claim by the Concreter for tip fees of \$1,000 for concrete. There are no invoices or receipts to support this charge. It is standard industry practice for concrete tipping to be free, if there is only concrete being dumped. I am not satisfied that the Concreter is entitled to this fee, as there is no evidence of receipts and no explanation provided as

to why tipping fees were charged for the concrete. This amount should be removed from the claim.

- 27 Taking into account the deductions of \$1,100 (tipping of concrete), \$550 (labour costs) and \$385 (plinth boards), I find the reasonable costs of the works undertaken to be \$8,789.¹ From this figure needs to be a deduction for the back path being prepared for pouring in the wrong spot. A further amount of \$550 for the reasonable costs of excavating the incorrect spot will be deducted from the invoice.
- 28 I find that the reasonable costs for works undertaken in accordance with the agreement is \$8,239.00.

What damage, if any, was caused to the property by the Concreter and what is the reasonable cost of rectification?

- 29 The Owner claims that he is entitled to offset the price paid to repair damages caused by the Concreter. He says the front and rear downpipes were both cracked at the base during concrete removal, new stirrups were needed to the base of the pergola and the irrigation system in the front yard was damaged which resulted in needing to remove and replace the bay trees.

The Downpipes

- 30 The Concreter admits damaging the downpipes, but says they did not need to be replaced and could have been covered in concrete. The Owner seeks \$330 for replacement. I find that the downpipes were damaged by the Concreter and the Owner is entitled to have these items repaired, not simply covered up by concrete. The amount of \$330 for these works is reasonable and this amount will be deducted from the amount payable by the Owner to the Concreter.

The Pergola Stirrups

- 31 The Owner claims a stirrup on the pergola needed to be replaced as it had dropped as a result of the concrete being removed. The Concreter claims that the concrete supporting all the stirrups of the pergola were kept intact and the photographs taken of the area support this claim. I am not satisfied that the Concreter was responsible for the fall of the pergola stirrup and as such there will be no deduction for this claim.

The Irrigation System and Trees

- 32 The Owner claims that the Concreter damaged the irrigation system when the front yard was excavated, and as a result some of the system needed to be replaced and the bay trees in the front yard died from lack of watering.
- 33 It is accepted that the Owner agreed for the Concreter to level the front yard. This work would necessarily involve excavation and the removal of

¹ All of these figures include GST.

the irrigation system. The Owner has failed to provide any photographic evidence to support the claim that the system was damaged during its removal. As such the claim for a deduction for additional irrigation piping is refused.

- 34 In relation to the claim for replacement trees, the Owner was unable to provide a reasonable explanation for why he did not water the trees when the irrigation system was removed. The Owner claims he attended the property every day and his daughter lived on site. In circumstances where the Owner agreed for the irrigation system to be removed and has not mitigated his loss by carrying out his own watering of the trees, I am not satisfied that the Concreter either damaged or is responsible for the costs of replacing the dead trees.

Conclusion

- 35 For the reasons stated above, I find that the Concreter is entitled to be paid the reasonable costs of the works undertaken in accordance with the agreement (\$8,239), less an amount for damages caused during those works (\$330). I shall make an order that the Owner pay the Concreter \$7,909.00.
- 36 There will be a further order that the Owner reimburse the Concreter the application fee to initiate the claim with the Tribunal being \$209 (pursuant to section 115B of the *Victorian Civil and Administrative Tribunal Act* 1998).

K. Campana
Member