

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D661/2008

**CATCHWORDS**

Domestic building, supply of double glazed windows, unauthorised variation, balance of contract price

<b>APPLICANT</b>	Jose and Nicole Iglesias
<b>RESPONDENT</b>	Art Windows Pty Ltd
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member M. Lothian
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	4 December 2008 and 16 January 2009 (on site)
<b>DATE OF ORDER</b>	19 January 2009
<b>CITATION</b>	Iglesias v Art Windows Pty Ltd (Domestic Building) [2009] VCAT 98

**ORDER**

- 1 The Respondent must allow the Applicants a credit of \$100.00 from the remainder of the contract price.
- 2 The Respondent must undertake the following work:
  - a replace window 5 with a window constructed of the same section as in the adjacent windows;
  - b replace the garage and laundry door locks with functioning locks that can be operated from inside and outside;
  - c realign only those rubber seals which might allow the argon between the panes of glass to escape; and
  - d file and clean the weep holes so that they have a workmanlike appearance.

- 3 The Respondent must undertake the work in the week commencing 9 February 2009 on a day that is convenient to both parties. Failing agreement, the Respondent may do the work on any day during that week during business hours on not less than two business days' written notice to the Applicants.
- 4 There is liberty to apply.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

For Applicants

In person

For Respondent

Mr M. Sykurski, director

## REASONS

- 1 The Applicants are owner-builders of a home at Lot 53, Highfield Way, Kurunjang. The Respondent supplied and glazed windows and glass doors for the home at a total price of \$24,660.00. The parties agree that \$6,660.00 remains unpaid, but the Respondent has not yet counter-claimed. I note, however, the statement of Mr Iglesias that once the work is complete he is happy to pay the balance.
- 2 The Applicants complain that the double glazing is not as per contract for a number of reasons.
- 3 The first is that the contract called for argon-filled gaps between the sheets of glass of 18mm whereas 16mm was supplied. Although I accept the evidence of the Respondent that the thermal characteristics of 16 and 18mm gaps are almost identical, the Respondent should not have changed the specification without the express permission of the Applicants. The Respondent must allow the Applicants a credit of \$100.00 for this unauthorised variation. The Respondent is not obliged to pay this sum but the Applicants may deduct it from the outstanding balance of the contract price.
- 4 The second is that a window identified as window 5 in the family room (the fixed window nearest the kitchen) has frames that are smaller in dimension than the frames around the other windows and doors in the same wall. I could see the difference in size when it was drawn to my attention. The parties negotiated prior to the hearing on site and both volunteered letters they had sent to the other party (“offer letters”). The offer letters indicate that both parties were willing for the Respondent to replace window 5 with the same section as in the adjacent windows. I order that the Respondent do that work.
- 5 The third is that the locks to the sliding doors in the garage and laundry do not work from outside. I note that these locks appear to have a design fault, which as between the Applicants and the Respondent is the responsibility of the Respondents. The Respondent must replace the door locks with functioning locks that can be operated from inside and outside.
- 6 The fourth is that some of the rubber seals between the glass appear not to seal properly in the corners. Mr Iglesias showed me one example in the family room which appeared to me not to be defective and another in the room to the left of the front door (when viewed from outside the home) which did appear to be defective. In accordance with the offer letters the Respondent must realign only those rubber seals which might allow the argon between the panes of glass to escape.
- 7 The fifth is that weep holes cut into the exterior of the window surrounds are somewhat rough. I observed this to be so. In accordance with the offer letters, the Respondent must file and clean the weep holes so that they have a workmanlike appearance.

- 8 The Respondent's offer letter was conditional upon the Applicants paying the outstanding sum of \$6,600.00. I cannot make orders with respect to this sum as there is no claim for it by the Respondent and under this contract work should be satisfactorily complete before there is a demand for the whole outstanding amount in any event.
- 9 Mr Sykurski of the Respondent said that work can commence in the second week of February 2009 and will take one day. I therefore order that the Respondent undertake the work in the week commencing 9 February 2009 on a day that is convenient to both parties. Failing agreement, the Respondent may do the work on any day during that week during business hours on not less than two business days' written notice to the Applicants.
- 10 I grant both parties liberty to apply to the Tribunal, in case there is a dispute arising out of these orders, in particular as to whether they have been satisfactorily fulfilled.

**SENIOR MEMBER M. LOTHIAN**