

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
CIVIL DIVISION**

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D316/2005

[2005] VCAT 1440

APPLICANT	Jonale Pty Ltd
RESPONDENT	Antoniette Nido
WHERE HELD	Melbourne
BEFORE	Senior Member D Cremean
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	20 July 2005
DATE OF ORDER	20 July 2005

ORDER

1. Claim and Counterclaim -
Dismissed. Matter settled.
2. No other orders.

REASONS

1. A claim is made by the Applicant for \$3,256.00 (variation) and \$2,128.70 (contract balance).
2. A counterclaim of \$9,750.00 is sought to be raised by the Respondent in response.
3. The parties signed written terms in this matter on 18 May 2004.
4. I am satisfied those terms were in full and final settlement.
5. The builder signed the terms voluntarily and not under duress and read the terms beforehand.

6. It is immaterial that the architect administrating the contract may have subsequently calculated different figures.
7. Later a cheque for \$34,540.00 was forwarded and continually presented. After refusals, the cheque finally was banked. But I regard it as having been banked voluntarily and on the terms on which it was proferred.
8. I am satisfied, informing myself as I may, that there was an accord and (executed) satisfaction. I note the variation sought by the builder is specifically referred to in the terms (and is denied there by the owners).
9. The proceedings (claim and counterclaim) must, accordingly, both be dismissed.

SENIOR MEMBER D CREMEAN

APPEARANCES:

For Applicant	Mr J Alessi, In person
For Respondent	Ms A Nido, In person