

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D26/2006

CATCHWORDS

Work and labour done – no expert evidence – function of Tribunal to assess sufficiency of work and specify scope of remedial work – extent to which this should be done - order made for the carrying out of work

[2006] VCAT 637

APPLICANT	Inderjit Kaur
RESPONDENTS	Ljupco Jovanov, Balagolco Jovanov
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	17 & 22 March 2006
DATE OF ORDER	18 April 2006

ORDER

1. Order the Respondents to carry out or procure the carrying out of the following work:
 - (a) replace the sheets of fibro-cement soffit lining in front of the front door which have previously become detached with properly affixed sheets of an appropriate length and repaint them to match the adjoining sheets.
 - (b) install a drain in the left hand front corner of the front balcony area sufficient to drain the area of water and reinstate the tiled surface and membrane after the drain has been installed.
 - (c) engage a registered plumber to ascertain the source of the roof leak at the rear of the house and rectify the fault.
 - (d) repaint the internal ceiling for the whole of the downstairs kitchen, lounge room, living room, passage and dining area sufficiently to achieve an adequate coverage of the water staining that has occurred.

- (e) replace all of the strapping and the bottom plank on the gable end at the rear of the house with timber suitable for external application that is, kiln dried hardwood or treated pine of a similar dimension to existing, flash the same properly to avoid water penetration behind the brickwork and paint it to match the existing.
2. All items must be carried out in a proper and workmanlike manner using good and sufficient materials and be completed by 31 May 2006.
3. Liberty is reserved for the Applicant to apply in regard to compliance with this order so that, if it is not complied with then, to the extent of the non-compliance, she may seek a monetary order.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicant	In person
For the Respondents	In person

REASONS FOR DECISION

The claim

1. The Applicant is the owner of a two storey dwelling house at 5 Malmsbury Place, Caroline Springs which was constructed by the Respondents approximately 3 years ago.

2. She seeks an order that the Respondents repair a number of defects in the house which she has listed in her application. The Respondents have acknowledged their responsibility to repair any defective workmanship and say that they have not been given the opportunity to carry out the works. The Applicant says that the Respondents' previous attempts at rectification have been inadequate.

The hearing

3. The parties appeared in person and no expert witness was called for either side. After hearing from the parties at the Tribunal's premises at 55 King Street, Melbourne on 17 March 2006 I adjourned the matter to an on-site hearing on 22 March at 4.00 p.m. In the presence of the parties I inspected the defects the Applicant and her husband were complaining about. In assessing these I have used my own personal experience and knowledge gained from hearing and determining many domestic building disputes. I am entitled to inform myself as I see fit and Tribunal members, particularly those sitting in a specialist list, necessarily acquire some knowledge of the subject matter with which they have to deal. However I am not an expert and so the extent to which I should make use of such knowledge without expert assistance should be limited to simple and obvious matters. I found the following defects.

The soffit lining

- 4 The soffit lining over the front door is constructed of fibro cement sheets which appear to have become dislodged in the past and have been refixed by the Respondents using screws. The Respondents have covered the heads of the screws with plastic caps of the type normally seen in internal joinery. One of these caps has fallen off, exposing the head of the screw. The result is most unsightly. In addition, I noticed that the sheets were not long enough to reach the

rear of the fascia board and the Respondents have attempted to fill part of the gap with silicone or some other material. Again, the result is most unsightly. I shall order the Respondents to replace the fibro-cement soffit lining in front of the front door which has previously become detached with properly affixed sheets of an appropriate length and to repaint them to match the adjoining sheets.

Leaking of balcony above entrance

5 Water is leaking from a balcony immediately above the front entrance porch. This balcony leads off the master bedroom. On inspection it was apparent that the drain intended to remove water from the tiled surface was located in the wrong position. It was in the front right hand corner as one stands in the doorway facing the street whereas the lowest point on the balcony is on the front left hand corner. This was confirmed when, at my request, the Applicant tipped some water onto the tiled surface and it ran into the front left hand corner. The First Respondent said to me that he had requested his plumber to put the drain in the other corner but he had put it in the wrong place. Although it may be the plumber's fault it is nonetheless defective workmanship of the Respondents and must be rectified. I shall order the Respondents to install a sufficient drain in the left hand front corner of the front balcony area sufficient to drain the area of water and to reinstate the tiled surface and membrane after the drain has been installed.

Water leak at rear of the house

6 There is another water leak towards the rear of the house. Water leaks through a number of ceiling penetrations in the dining and family room areas. Signs of previous wetting are also apparent in the joins of the plaster sheets which would indicate that the water penetration may be coming from somewhere near where the dining area intersects with the rear wall of the house. The source of the leak is unknown. From a ladder I could see that the gutter has not been properly cut away to allow water to flow into the downpipes. Instead, only a few holes have been made. This should be rectified in both places. This might be the cause of the problem although the source of water seems to be more substantial than that. The Applicant and her husband say that water entry occurs when the rain strikes the rear of the house.

- 7 The gable end at the rear of the house is sheeted in fibro-cement, the brick veneer finishing at the height of the external wall to the ground floor. I was unable to see how the intersection between these two materials is finished but the junction between the two may well be the source of the leak. The tiles were terracotta and apparently in good condition and the ridge pointing was not cracked and appeared to have been well executed. Where the tiled roof joins the brick veneer wall of the house the flashing is stepped into the brickwork and siliconed and seems to be securely fastened. I am not an expert but there were no obvious signs of water penetration from that source.
- 8 I will order the Respondents to engage a registered plumber to ascertain the source of the roof leak and rectify the fault. I shall also order them to repaint the internal ceiling for the whole of the downstairs area since that area is continuous without breaks. One coat of paint may be sufficient so long as an adequate coverage is achieved.

Strapping at gable end

- 9 The sheets of fibro cement making up the gable end at the rear of the house are butted together with the joins covered by timber strapping. One of the pine strapping boards became dislodged and fell to the ground. On inspection, it appeared that all of the vertical boards were rotting at the point where they joined the horizontal plank forming the chord at the bottom of the gable. I examined the board that had fallen down and noted that it was ordinary radiata pine which is obviously not suitable for an external application. I shall therefore order the Respondents to replace all of the strapping and the bottom plank on the gable end at the rear of the house with timber suitable for external application that is, kiln dried hardwood or treated pine of a similar dimension, to flash the same properly to avoid water penetration behind the brickwork and paint it to match the existing.

The form of the order

- 10 It is not common for this Tribunal to order a builder to return to the site and carry out work because usually the relationship between the parties has broken down to such an extent that it is unlikely they will be able to agree on whether the order has been complied with or not. In this instance I sensed some level of goodwill

between the parties to resolve the matter and since there is no expert evidence before me, I cannot make a monetary order.

- 11 I shall reserve liberty to the Applicant to apply in regard to compliance with this order so that, if it is not complied with then, to the extent of the non-compliance, she may seek a monetary order in a sum sufficient to defray the cost of engaging another tradesman to carry out any work the Respondents have not done. In order for such an application to be made, the Applicant would have to obtain expert evidence in the form of quotations or reports from suitably qualified tradesmen as to the scope of works necessary and the cost to be incurred.

SENIOR MEMBER R. WALKER