

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT Reference: D791/2005

CATCHWORDS

Domestic building – defects in premises - subsequent purchaser.
[2005] VCAT 2643

APPLICANT: Janet Maitland

FIRST RESPONDENT: Housing Guarantee Fund

SECOND RESPONDENT: G & L Constructions

WHERE HELD: Melbourne

BEFORE: Senior Member D. Cremean

HEARING TYPE: Small Claim Hearing

DATE OF HEARING: 9 December 2005

DATE OF ORDER: 9 December 2005

ORDERS

1. The decision of the Fund given on 10 October 2005 is set aside.
2. I direct the Fund to process this claim in the normal course.
3. I grant liberty to the Applicant to renew these proceedings until 1 February 2006.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

For the Applicant: In person

For the First Respondent: Mr Rod Atcliffe

For the Second Respondent: Mr Geoff Lumalasi

REASONS

1. In this matter the First Respondent (the Fund) has rejected the Applicant's claim by letter dated 10 October 2005. Subsequently, on 17 October, the Applicant has made application to the Tribunal seeking a review of the Fund's decision.
2. The Applicant's premises are at 4 Walter Street South Yarra. She purchased those premises in May 2005 for \$850,000.00.
3. At the hearing I heard sworn evidence from the Applicant, from Mr Julian Davies (an expert called by the Fund) and from Mr Lumalasi of the Second Respondent (the builder).
4. At the commencement of the hearing the Fund conceded there were defects at the Applicant's premises and that in the normal course it would have required the builder to rectify them. The Fund also conceded that a figure of \$9,500.00 for repairs, claimed by the Applicant (based on a quote from Plumblite Pty Ltd dated 3 December 2005) was fair and reasonable. In fact the quote from Plumblite Pty Ltd is for a lesser sum of (\$8,970.00).
5. The problem at the premises concerns, principally, a dampness issue in the bathroom and an associated problem in the en suite. Photographs were produced which I have viewed carefully. They have been very helpful. Also produced was the written report of Mr Davies (dated 5 December 2005).
6. Having heard the evidence of the parties I am quite satisfied that there are the defects in the premises detailed in Mr Davies report – in both the bathroom and en suite areas.
7. It seems to me that the Applicant is entitled to claim that the works in these areas

contravene the warranty provisions in s.8 of the *Domestic Building Contracts Act* 1995. Those warranties run with the building under s.9 of such Act and it is on that basis that the Applicant, as a subsequent purchaser, is entitled to make her claim.

8. I am unable to say whether the prior owner's lack of activity, in the way of repairs, over the years, may have caused or contributed to the Applicant's situation.
9. Nor can I agree with the Fund that the maxim *caveat emptor* applies. The warranties under the Act cannot, in my view, be displaced in this way on the basis of what was submitted to me.
10. It seems to me, on the balance of probabilities, I must find in favour of the Applicant.
11. I set aside the Fund's decision in consequence and make orders accordingly.

SENIOR MEMBER D. CREMEAN