

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTYLIST

VCAT REFERENCE NO. BP1330/2015

CATCHWORDS

Contract between builder and bricklayer; terms of the contract; extent of work undertaken; adequacy of the work.

APPLICANT	Marque Property Group Pty Ltd (ACN: 162 527 004)
RESPONDENT	Bowen Building Constructions Pty Ltd (ACN 606 619 649)
WHERE HELD	Melbourne
BEFORE	Senior Member M. Lothian
HEARING TYPE	Hearing
DATE OF HEARING	10 June 2016
DATE OF ORDER	10 June 2016
DATE OF REASONS	8 July 2016
CITATION	Marque Property Group Pty Ltd v Bowen Building Constructions Pty Ltd (Building and Property) [2016] VCAT 1133 (8 July 2016)

REASONS

- 1 I heard and determined this proceeding on 10 June 2016. The applicant was the Builder who had claimed a total of \$38,970 from the respondent Bricklayer on the basis that the bricklaying was of poor quality and needed to be completed and rectified by others. The Bricklayer counterclaimed \$11,300 for “works done and four days of rectifying works and time lost due to [the Builder]”.
- 2 On 27 June 2016 the Builder wrote requesting “the breakdown of reasons for the decision made on 10 June 2016”. The following is edited reasons given orally that day.

Contract price

- 3 The applicant was the Builder and the respondent was the Bricklayer for the new home in Ingram Avenue Glen Waverley. In accordance with the evidence of the Bricklayer, conceded to by Mr Mitchell for the Builder, the contract price was \$32,949 inclusive of GST. The parties agree that the Builder paid the Bricklayer \$19,350.

End of the contract

- 4 The parties agree that the contract came to an end before the brickwork was finished. The Builder's position is that the Bricklayer unreasonably refused to complete. I prefer the evidence of the Bricklayer that there was a dispute about payment for another job in Belmore Road, Balwyn, which is not the subject of this proceeding, and this led the Bricklayer to refuse to return in circumstances where Mr Bowen for the Bricklayer was concerned that the Bricklayer might not be paid all that was due for this job either. I accept Mr Bowen's evidence that the Bricklayer ended the contract in circumstances where it was concerned about payment and also concerned about the technical adequacy of some of the instructions given to it. I find that ending the contract in the circumstances was reasonable.

Degree of completion

- 5 The parties agree that the brickwork was completed to the sides and back of the home. They agree that part of the front of the home was still to be completed when the Bricklayer left and that the front fence had not been built. Mr Bowen estimated that about 85% of the brickwork had been undertaken and he claimed that approximately 21,698 bricks had been laid which represents a little more than 85% of the total bricklaying contemplated by the contract. Mr Mitchell was not in a position to dispute Mr Bowen's estimate because although he had significant control over the site towards the end of the Bricklayer's period at the property, other people had been in charge before him.

THE BUILDER'S CLAIM

- 6 The Builder claimed that the work was of poor quality and the total cost to rectify using other tradespeople was \$42,139.85. However, in the course of the hearing the Builder withdrew a claim for \$3,987.50 for touch-ups to new weep holes that had been installed after the Builder had arranged for rendering of the property. The touch-ups were necessitated by installation of weep holes that should have been installed before any rendering was done.

Missing expansion joints and weep holes

- 7 A number of items were included in the invoice for G & D Bricklaying Pty Ltd [the Builder's rectifying bricklayer] which totalled \$16,452.35, but which was not itemised. The Builder claimed that missing expansion joints

was one of these items. I am satisfied that at least one expansion joint was not installed by the Bricklayer. I note that Mr Bowen said that each expansion joint would take approximately half an hour to install for a two story saw-cut joint. I also note his evidence that bricklayers are charged out at \$35 an hour plus GST. I prefer Mr Mitchell's evidence that bricklayers are charged at between \$55 and \$65 per hour plus GST and I allow \$66 per hour inclusive of GST. I allow two days for the expansion joints and any weep holes that needed to be installed being \$1,056.

Perpends ranging in thickness

- 8 I accept the evidence of Mr Mitchell that some of the perpends were not in accordance with the requirements of the contract between the parties which called for them to be 10 mm wide plus or minus 3 mm. A few examples were given. I am not satisfied that there was general poor practice regarding perpends and allow \$200 for this item.

Walls not plumb

- 9 The parties disagreed about whether any of the walls were out of plumb. In the absence of photographic or other evidence I am not satisfied on the balance of probabilities that there were walls which were significantly out of plumb and make no allowance for them.

Lintels at back alfresco

- 10 The Builder complained that the bricks were poorly laid to the lintels at the alfresco. I prefer Mr Bowen's evidence that difficulties with these lintels was caused by poorly constructed steel work and I make no allowance for them.

Rendering

- 11 I accept the evidence of Mr Mitchell that the repaired brickwork was adequate but that the Builder chose to satisfy their clients' desire to have the sides and back of the home rendered. I am not satisfied that this was necessitated by any defect in brickwork constructed by the Bricklayer and make no allowance for it.

Total due to the Builder

- 12 The Bricklayer must allow the Builder \$1256 being \$1056 for the installation of control joints and \$200 for rectification of perpends.

THE BRICKLAYER'S COUNTERCLAIM

- 13 The Bricklayer claimed \$11,301 being \$7,071 for work undertaken after the invoices rendered by it [all of which had been paid] and a further \$4,230 for delays caused by the lintel problems. I am satisfied that the Bricklayer is entitled to the sum of \$7,071 for further work. I am not satisfied that the Bricklayer is entitled to any amount for delay.

SUMMARY

- 14 The Builder must pay the Bricklayer \$5,815 being the outstanding sum of \$7,071 less \$1,256 to the Builder. Payment must be made forthwith. The claim and counterclaim are otherwise dismissed.

SENIOR MEMBER M. LOTHIAN