

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. BP1635/2018

**CATCHWORDS**

Claim in the Building and Property List for the costs associated with plumbing works – informal relationship between the parties - “helping one another out” – applicant unable to establish an agreement for payment or the reasonableness of charges – claim dismissed.

<b>APPLICANT</b>	Meladone Pty Ltd (ACN 074 929 098) t/as TB & J Plumbing & Maintenance Services
<b>RESPONDENT</b>	James Walden
<b>WHERE HELD</b>	Echuca
<b>BEFORE</b>	K. Campana, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	14 February 2019
<b>DATE OF ORDER</b>	19 February 2019
<b>CITATION</b>	Meladone Pty Ltd v Walden (Building and Property) [2019] VCAT 241

**ORDER**

For the reasons provided in writing, the Tribunal orders that:

1. The application is dismissed.

K. Campana  
**Member**

**APPEARANCES:**

For Applicant	Trevor Andrews (Director)
For Respondent	In person

## REASONS

- 1 “Helping out a mate”, “barter” or even “contra” are all apt labels to describe the relationship between the director of the applicant and the respondent. It was only when the two parted company, that the applicant made a demand for payment for plumbing works carried out some twelve months earlier.
- 2 Meladone Pty Ltd, trading as TB & J Plumbing and Maintenance Services (**the Plumbing Company**), seeks an order from the Tribunal that James Walden pay it \$1,700 for unblocking a toilet and installing a hot water service at a property in Echuca.
- 3 Mr Walden says he thought he had an arrangement with the director of the Plumbing Company, Trevor Andrews, that they helped one another out. He says he has more than held up his side of the bargain.
- 4 The parties agree that there was no real discussion about payment for the work, prior to the work being undertaken. The Tribunal must determine if there was an “arrangement” in place, and what the terms of that arrangement were.
- 5 If there is no such arrangement, then in the absence of an agreement on the amount to be charged for the work, the Plumbing Company may be entitled to be paid the reasonable costs of the services and goods provided.<sup>1</sup>

### Factual History

- 6 Mr Andrews has a number of enterprises in the Echuca area. In addition to being a plumber, he also operates the Pastoral Hotel.
- 7 Mr Walden is a truck driver who started staying at the Pastoral Hotel in 2013. Five days a week his stay would be paid for by his employer, and the other two days he would pay for his stay, albeit at the same discounted rate his employer paid, being \$50 a night. For six months, Mr Walden’s wife also stayed with him. The rate did not increase to the standard \$80 a night, for a dual occupancy, but remained at \$50 a night.
- 8 During his stay, Mr Walden would often “*help out*” at the hotel. He would unload deliveries, collect glasses and clean rooms. His wife also cleaned rooms at the hotel for a period of time. On one occasion, after plumbing works, the subject of this claim, were carried out, Mr Walden, a qualified mechanic, spent seven hours working on a vehicle for Mr Andrews.
- 9 In addition to the reduced payment for accommodation at the hotel, Mr Andrews had also helped Mr Walden out. When Mr Walden was looking at an investment property, Mr Andrews went and “*checked it out*” for him.
- 10 In May 2016, when the tenants in that investment property complained about a blocked toilet, Mr Andrews offered to clear the blockage. Mr

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<sup>1</sup> *Quantum Meruit* – a reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated in a legally enforceable contract.

Andrews attended and did some work, but Mr Walden says it was the tenant who cleared the blockage the following day.

- 11 Approximately ten days later, Mr Walden and Mr Andrews were having a discussion, when Mr Walden revealed that the tenants had recently complained about the hot water service in the investment property. Mr Andrews offered to replace the hot water unit. A discussion was had about a Rinnai 26 infinite being too large for the size of the investment property, and how Mr Andrews had bought a second-hand Bosch 18, which he had used, but was now sitting in his shed.
- 12 The parties agree that no discussion was had about payment prior to Mr Andrews attending and installing the Bosch 18.
- 13 When the installation was complete, Mr Walden says he asked Mr Andrews how much the job had cost, and he responded with “Don’t worry we will work it out”. Mr Andrews agrees he said these words.
- 14 What differs, is what the parties say those words meant. Mr Andrews says he meant that he would provide Mr Walden with an invoice when he got around to working it out. Mr Walden says he took that to mean that he would help Mr Andrews out, as he had been doing at the hotel, and is the reason why he worked on Mr Andrews’ car.
- 15 The parties disagree about whether any further discussions took place in relation to the cost of the plumbing works.
- 16 In May 2017, Mr Walden left the hotel, and shortly after, Mr Andrews issued him an invoice in the name of the Plumbing Company.
- 17 “*Being too busy*” is the reason Mr Andrews gives for not sending out an invoice in the twelve months after the works were carried out.

### **What is the arrangement?**

- 18 The Plumbing Company is the applicant and as such bears the burden of establishing, on the balance of probabilities, an entitlement to payment of the invoice.
- 19 In the first instance I am not satisfied of any agreement between the Plumbing Company and Mr Walden. If there is any arrangement, it is between Mr Andrews and Mr Walden.
- 20 However, for the sake of completeness, even if Mr Andrews had been named as the applicant, I find that the arrangement between the parties was one of an informal nature that did not require the exchange of money. I have taken into account the evidence of the history of each party helping the other out in kind, rather than with payment, the absence of any discussion about payment but a mere reference to “working it out”, and the delay in making any request for payment for some twelve months.
- 21 Given the assistance Mr Walden gave to the repairs on Mr Andrews’ car, I further find that Mr Walden has held up his end of the bargain.

22 In the circumstances, the application will be dismissed.

**Is there a claim for the reasonable costs of services provided?**

23 If I am wrong about the “arrangement” between Mr Andrews and Mr Walden, I would also have dismissed the claim as Mr Andrews was not able to substantiate the value of the \$1,700 he had charged for the works undertaken to clear the blocked pipe and change the hot water service.

24 For example, he had no receipts for the parts, and Mr Walden gave evidence that the second-hand hot water unit that was installed was at least 13 years old (with the production on the unit ceasing that long ago). He also failed to provide any evidence about his normal rates for charging, or the reasonableness of those.

K. Campana  
**Member**