

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP703/2014

CATCHWORDS

Domestic building, alleged defects, non-attendance for the Respondent.

APPLICANT	Mrs Sandra Anita Morris
RESPONDENT	101 Construction Pty Ltd
WHERE HELD	Melbourne
BEFORE	Senior Member M. Lothian
HEARING TYPE	Hearing
DATE OF HEARING	4 February 2016
DATE OF ORDER	4 February 2016
DATE OF REASONS	12 February 2016
CITATION	Morris v 101 Construction Pty Ltd (Building and Property) [2016] VCAT 186

ORDERS

- 1 The Respondent must pay the Applicant \$52,333 forthwith.
- 2 As the Applicant has been completely successful, under s115B of the *Victorian Civil and Administrative Tribunal Act 1998* (“VCAT Act”), the Respondent must pay the Applicant the filing fee of \$552.60 and the hearing fee for 4 February 2016 being \$399.80; a total of \$925.40. Payment must be made forthwith.
- 3 Being satisfied that it is fair to do so, under s109 of the VCAT Act, the Respondent must pay the Applicant’s legal and expert costs, to be agreed, but failing agreement to be fixed by the Costs Court on a standard basis on the County Court scale.

SENIOR MEMBER M. LOTHIAN

APPEARANCES:

For Applicant

Ms S. Morris and Mr G. Morris in person

For Respondents

No appearance

REASONS

- 1 The Applicant is the owner (“Owner”) of 8 King Georges Avenue Mornington. The Respondent was the builder (“Builder”). The Points of Claim and Points of Defence show that the parties agree that they entered a contract dated 25 May 2010 for the Builder to construct the Owner’s home.
- 2 An Occupancy Permit was issued on 22 March 2011.
- 3 The Owner claimed in her application that there were a number of defects as described in the report of A1 Building Group, all of which were denied by the Builder.
- 4 By order of the Tribunal dated 20 July 2015, the Owner was required to file and serve an expert report prepared in accordance with PNVCAT2: Expert Evidence. She filed a report by Mr Terry O’Donoghue and Mr David Gough, both of Buildcheck (“the experts”) dated 18 August 2015 and an amendment to that report dated 27 August 2015. No report has been received from the Builder.
- 5 According to the cost estimates attached to the Buildcheck report of 18 August 2015, the Owner’s claim is for \$52,333. She also claims costs.

NON-ATTENDANCE BY THE RESPONDENT

- 6 I note with concern that the Builder was not represented at the hearing of 4 February 2016 and has not corresponded with the Tribunal at all since the directions hearing of 5 October 2015.
- 7 I accept the evidence of Mr Gary Morris that Mr Daoud, director of the Builder, failed to attend the directions hearing of 5 October 2015 until the Tribunal reached him by telephone. I accept Mr Morris’s evidence that during the directions hearing the Builder’s address for service was confirmed as being the same as in the application, that a copy of the Buildcheck report of 18 August 2015 was emailed to him and that he confirmed receipt while on the telephone.
- 8 I note that the Tribunal sent the Builder a copy of the orders of 5 October 2015 by express post on 6 October 2015. Those orders included the date of the hearing for 4 February 2016.

DEFECTS AND RECTIFICATION

- 9 I accept the evidence of the experts given in their reports and before me at the hearing of 4 February 2016 concerning the defects and the method and cost of rectification.
- 10 In accordance with the reports, the Builder must pay the Owner \$52,333 forthwith.
- 11 As the Owner has been completely successful, under s115B of the *Victorian Civil and Administrative Tribunal Act 1998* (“VCAT Act”), the Builder must pay the Owner the filing fee of \$552.60 and the hearing fee for 4

February 2016 being \$399.80; a total of \$925.40. Payment must be made forthwith.

- 12 Being satisfied that it is fair to do so, under s109 of the VCAT Act, the Builder must pay the Owner's legal and expert costs, to be agreed, but failing agreement to be fixed by the Costs Court on a standard basis on the County Court scale.

SENIOR MEMBER M. LOTHIAN