

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

VCAT REFERENCE NO. BP1655/2016.

BUILDING AND PROPERTY LIST

CATCHWORDS

Domestic Building work involving principally painting and tiling; Applicant to supply tiles and paint; Applicant terminated Builder before works completed; Applicant found to have supplied insufficient tiles and paint to enable Builder to complete works; Tiling carried out by Builder found to be defective; Scope of rectification works as assessed by Builder's expert accepted in preference to Applicant's expert, Builder ordered to pay Applicant cost of rectification of defective tiling as assessed by Builder's quantity surveyor.

APPLICANT	Sophie Nicola
RESPONDENT	Immanuel Homes Pty Ltd (ACN 604 344 302)
WHERE HELD	Melbourne
BEFORE	Member B Thomas
HEARING TYPE	Hearing
DATE OF HEARING	28 June 2017 and 13 September 2017
DATE OF ORDER	13 October 2017
CITATION	Nicola v Immanuel Homes Pty Ltd (Building and Property List) [2017] VCAT 1673

ORDER

1. By 1 November 2017 the Builder must pay the Applicant the sum of \$2,023.32.
2. No order as to costs.

B Thomas
MEMBER

APPEARANCES:

For Applicant: Ms M Dong, daughter-in-law
For Respondent: Mr N Jano, director

REASONS

BACKGROUND

- 1 The Applicant Ms Sophie Nicola (“owner”), purchased a residential property in Reservoir in May 2016. She engaged the Respondent Immanuel Homes Pty Ltd (“builder”) to renovate the bathroom, the toilet and laundry, replace the front door and install new quads in the living room and three other rooms and repaint the residence internally (the works). The Builder commenced the works in June 2016 but was terminated on 19 July 2016. The owner alleges that the works carried out by the builder were defective in a number of respects and claims \$35,250.00 as the cost of rectification.

THE HEARING

- 2 The hearing commenced on 28 June 2017 and concluded on 13 September 2017. The owner was represented by her daughter-in-law, Ms Melissa Dong. The builder was represented by Mr Ninos Jano, its sole director. The owner relied on a report by Alan W Green, a registered architect and a certified building inspector, dated 18 July 2017. Mr Green gave evidence. The builder relied on reports by Salvatore Mamone, an architect, dated 25 August 2017, and Stephen J Pitney, a quantity surveyor, dated 30 August 2017. Neither Mr Mamone nor Mr Pitney gave evidence to the Tribunal.

THE SCOPE OF THE WORKS

- 3 At the outset there was disagreement between the parties as to the scope of the works. The owner said that the works comprised –

(a) Bathroom

- Removal of existing tiles, vanities and hand basin;
- Installation of new tiles, fittings, basin and vanities.

Mr Jano said that the tiles, vanity and mirror were to be supplied by the owner.

(b) Toilet

- Removal of old toilet bowl;
- Installation of new tiles and the toilet bowl.

Mr Jano said tiles were to be installed to the walls only.

(c) Laundry

- Removal of existing sink, cabinets and fittings;
- Installation of new sink, cabinet and fittings cabinet;
- Installation of new tiles.

Mr Jano said one wall only was to be tiled.

- (d) Painting (all paint and equipment supplied by the owner)
- Preparation and painting of all walls, ceilings, window frames, door frames, doors and skirting boards.

Mr Jano said one coat would be applied to the ceilings, two coats to the walls and one coat of primer and 2 coats of paint to the architraves and skirtings.

- (e) Other
- Removal and installation of new front door and door handle;
 - Installation of new quads.

Mr Jano said the replacement front door and handle would be supplied by the owner and the wall from where the air conditioner was to be removed and a wall in the second bedroom were to be patched.

- 4 The builder's quotation dated 10 June 2016 for \$3,150.00 including GST was addressed to Perry Nicola, the owner's son. The works were stated to be –

Install approximate 30sq tiles & Grout In Bathroom, Toilet, & Laundry

Provide waterproofing in Bathroom and Laundry.

Install new taps and shower head (supplied by client)

Removal & and disposal of old tiles only.

Repair any damages to plaster after removal of tiles in bathroom & Laundry

Supply and install S/S laundry trough with white cabinet 45l.

Install vanity. (Client to Supply with all fitting)

Toilet to be tiled as well (fix price to tile)

Plaster to be sanded in toilet.

(Client will need to organise a cleaner to clean the dust left on the walls & floor).

- 5 The owner says she paid the builder a total of \$7,090.00 in cash and produced a tax invoice from the builder dated 2 July 2016 for \$3,500.00, and a handwritten receipt dated 17 July 2016 for \$3,000.00. Mr Jano did not deny receiving these sums, but said that there were extra items of work agreed with Perry, which were confirmed by text. However, he did not produce these texts.

THE EVIDENCE

Ms Nicola

- 6 The owner did not give evidence.

Mr Jano

- 7 Mr Jano said that he quoted to lay tiles half way up the bathroom wall, but he was subsequently instructed by Perry to complete the tiling to the ceiling. Although he was provided with four additional boxes of tiles, they were insufficient to complete the tiling to the ceiling, and on Perry's instructions, he used offcuts to complete the last line of tiles below the ceiling in both the bathroom and the toilet. In the laundry he quoted to lay tiles to a height of 1.2 metres, but this was increased to 1.5 metres as the owner wanted tiling over the trough.
- 8 Regarding the painting, Mr Jano said he quoted to paint the ceilings with one coat, the walls with two coats and one coat of primer and two top coats on the doors and architraves. However, he was only supplied with 10 litres of ceiling paint, 30 litres of wall paint, four litres of primer and 10 litres of paint for the architraves and doors, which was insufficient to complete painting. The owner refused to supply any additional paint, but in any event Perry said the painting was acceptable.
- 9 The replacement front and locking mechanism were provided by the owner. However only two of the three hinges required were supplied because the owner refused to purchase an additional pack of two hinges, and it was therefore necessary to use a hinge from the old door. The handle supplied with the locking mechanism, when installed, prevented the security door from closing. The owner refused to purchase another handle, but Perry accepted Mr Jano's suggestion that the handle be installed upside down to avoid making contact with the security door.
- 10 Mr Jano said he would text Perry for instructions, who would attend the site between 3 and 5 pm the following day. Work progressed satisfactorily until 18 July 2016 when the owner's two other sons attended the site, complaining about uncompleted and defective work, particularly the painting and tiling. The following day Perry's older brother and 3 other males, none of whom Mr Jano knew, appeared on the site demanding \$7,000.00 as reimbursement for the defective painting and tiling. As he was concerned for his safety, Mr Jano said he would pay the following day. The next day he received a text from Perry demanding \$4,000.00 for the painting and tiling. By an exchange of text messages they agreed on \$3,000.00, Mr Jano prepared a Deed of Settlement to the effect that on payment, neither party would make any further claim against the other. On 28 July 2016, Mr Jano received a further text from Perry advising the owner would not sign the Deed and would be taking the matter up with the Victorian Building Authority.

Mr Green

- 11 Mr Green was the only witness called by the owner. He said he was instructed to inspect works carried out by the builder to date and provide a report as to the quality of that work, detailing what rectification was required and the cost of such rectification. He inspected the works on 13

July 2017 and provided report dated 18 July 2017, which complies with VCAT Practice Note PNVCAT2. Mr Green adopted his report.

- 12 Although Mr Green is a registered architect and a certified building inspector, he is not a registered building practitioner. However, he has 45 years' experience in the construction industry as an architect, construction manager and project manager in a variety of building works, including residential projects. I accept that he is qualified to provide his report as an expert.
- 13 Mr Green was critical of the tiling, painting and carpentry works, which was evident from the photographs included in his report. In respect of the tiling works, he said –
 - the works are poorly laid out;
 - joints are not consistent and vary unacceptably;
 - there were no metal strips cover the rough cut edges tiles at corners;
 - the tiled cutting is rough with edges chipped;
 - there are gaps between wall and floor tiles, around window and door architraves and the shower recess in the bath; and
 - the width of corner sealant varies and is not consistent with tile joint widths.
- 14 As to the painting works, he said -
 - it did not appear that any preparation works have been undertaken prior to commencing painting;
 - existing painted timber services had not been sanded or an undercoat applied, as evidenced by the single coat of paint applied that was peeling off the old paint work;
 - walls, doors, ceilings and timber work appear to have had only one coat of paint applied and are patchy;
 - paint has been spilt on the timber floors and the external paving in numerous locations; and
 - door hinges and light fittings have not been masked or drop sheets used to eliminate spillage or paint drops.
- 15 Regarding the carpentry works, Mr Green said the new front door has been roughly installed with uneven gaps around the perimeter and the block and handle have been poorly installed.
- 16 Mr Green recommends that the tiling be removed, the surfaces be prepared correctly in accordance with the manufacturer's recommendations and the tiles relaid in accordance with the Victorian Building Authority Guide to Standards and Tolerances (the VBA Guide) and the relevant Australian Standards. As to painting, the walls, ceiling and internal timber work need

to be prepared according to the VBA Guide and all surfaces under coated with at least one finishing coat applied. All carpentry works also need to be under taken in accordance with the VBA Guide and the relevant Australian Standards.

17 Using Rawlinson's Guide, Mr Green costed rectification as follows –

• Painting	\$14,500.00
• Tiling	\$18,500.00
• Carpentry	\$ 1,500.00
• Plumbing and electrical	\$ 500.00
• Unblocking storm water drain	<u>\$ 250.00</u>
TOTAL	\$35,250.00

18 Mr Jano did not seek to cross-examine Mr Green.

19 Mr Jano denied that he had tipped building debris and paint down the stormwater grate pit causing a blockage. He said the drain was already blocked due to a lack of maintenance, it was embedded in concrete and could not be removed in order to pour anything into the pit. He referred to the photographs shown on pages 39 and 40 of Mr Mamone's report.

20 He denied that the front door was misaligned. He accompanied Mr Mamone on his inspection of the site on 7 August 2017 and observed that the off cut and misaligned tiles in the bathroom, toilet and laundry had not been replaced. Whilst he accepted there were paint drops on the floor throughout the house and misaligned tiles, and that the installation of the laundry trough does not comply with the Plumbing Code, he said he acted in accordance with Perry's instructions.

21 Ms Dong said that on 11 June 2016, 30 boxes of tiles were ordered. On 21 June 2016. Mr Janos texted Perry that he was 3 or 4 boxes short. On 23 June 2016 an additional 6 boxes were purchased and delivered to Mr Jano in early July. He used 5 of the 6 boxes, leaving one box unopened. She denied that Mr Jano had advised insufficient paint was supplied. She said that colour of the grout the bottom of the storm water drain was the same colour as that used in the bathroom, toilet and laundry.

22 Mr Jano relied on two expert reports; one by an architect, Salvatore Mamone, and the other by Stephen Pitney, a quantity surveyor. Neither Mr Mamone nor Mr Pitney gave evidence to the Tribunal.

Mr Mamone

23 Mr Mamone inspected the residence on 7 August 2017 in company with Mr Jano, and provided a report dated 25 August 2017. The report complies with the VCAT Practice Note for an expert's report. In summary, Mr Mamone considers that the builder was unable to complete the works due to the owner failing to provide sufficient quantities of tiles and paint.

- 24 His report addresses the front entry door, the painting by reference to the entrance corridor, bedroom 1, the ensuite/bath, the toilet, bedroom 2, bedroom 3, the laundry, the kitchen, the meals area, the lounge, the timber floors, the tile installation by reference to the bathroom/ensuite, the bath and dado wall, the shower, the floor, the toilet, the laundry and the blocked drains. Each item discussed is accompanied by photographs.
- 25 He considers that the front entry door supplied by the owner should remain as there are no other options, because in its correct position, the handle strikes the security door. His recommended rectification for this item would be part of the builder's completion.
- 26 As to painting, Mr Mamone uses the term "starved paint evident", indicating further painting is necessary and the other items in painting would be part of the builder's completion. He does not consider there is any defect in the builder's carpentry or joinery.
- 27 Mr Mamone is critical of the laying of the tiles in the bathroom/ensuite, between the bath hob and dado wall between the bath and shower, the floor, the toilet and the laundry. He also agrees that the installation of the trough in the laundry is incorrect.
- 28 Finally, having inspected the storm water drain behind the garage and the outlet in the kerb and channel in the street, Mr Mamone concludes that it was not blocked by the builder but was due to a lack of maintenance on the part of the owner.

Mr Pitney

- 29 Mr Pitney is a qualified quantity surveyor of some 35 years' experience. His report dated 30 August 2017 complies with VCAT Practice Note PNVCAT2. Using a rate of \$48 per hour a carpenter, a painter, a plasterer and a tiler, Mr Pitney costs the rectification works recommended by Mr Mamone at \$8,522.00 including a builder's margin of \$1,421.00.
- 30 As to Mr Green's lump assessment of \$35,250.00, Mr Pitney comments that the allowances for painting, tiling, carpentry and cleaning and plumbing and electrical are not supported by any detailed cost breakup. In addition, Mr Green assumes that a full strip out and re-tiling of the bathroom and toilet is required, but Mr Mamone does not consider that this is necessary. Furthermore, adopting a labour rate of \$50 per hour, Mr Green's estimate totals approximately 700 hours of work which equates to two men working almost 9 weeks. In Mr Pitney's opinion, even if the bathroom and toilet needed to be fully demolished, 9 weeks is excessive.

CONCLUSION

- 31 I find that it was a condition of the agreement between the owner and the builder that she would supply all materials, in particular the tiles and paint. Perry Nicola was not called to give evidence as to his dealings with Mr Jano. I accept Mr Jano's evidence that from the commencement of the

works until he was terminated on 19 July 2016, his instructions came from Perry Nicola. This evidence was uncontested, and I see no reason to reject it. On the contrary, *I found Mr Jano to be a reliable witness*. I also accept Mr Jano's evidence that insufficient tiles and paint were provided to him. I also find that the builder was summarily terminated without being given the opportunity to complete the works, remove paint blemishes, or rectify defective works.

- 32 I find that the tiling was defective. Whilst Mr Jano said that he was instructed by Perry Nicola to use off cuts to complete the tiling, in his report at pages 27 -39, Mr Mamone details multiple defects including tiles out of alignment both horizontally and vertically with adjoining tiles, tiles cut out of square, tiles with chipped edges, tiles displaying jagged edges, tile grout lines mismatching, tiles incorrectly positioned along wall edges, tiles under cut and over cut. He also details particular defects in the bathroom/ensuite, the toilet, and the laundry.
- 33 I therefore find that the builder must reimburse to the owner the reasonable cost of rectifying the defective tile installation. However, I do not accept Mr Green's contention that a full strip out of the bathroom and toilet is required, at a cost of \$18,500.00. As noted by Mr Pitney, this figure is simply a lump sum allowance unsupported by any detailed cost break up between labour, materials, overheads and profit. I accept Mr Pitney's finding of \$1,686.00 for tiling, with a 20% margin for overheads and profit of \$337.20, a total of \$2,023.00.
- 34 I will order that the builder pay to the owner the sum of \$2,023.00.

B Thomas
MEMBER