

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## CIVIL DIVISION

### BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP1470/2017

### CATCHWORDS

Building, non-attendance at hearing by a party, arrangement and contracts between sub-contractor and sub-sub-contractor, alleged breaches by sub-sub-contractor – interfering in relationship between sub-contractor and head contractors, defective work, failure to complete work on time.

<b>APPLICANT</b>	Nu-Inovations Pty Ltd (ACN 612 532 868)
<b>RESPONDENT</b>	Weather Masters Roofing Pty Ltd (ACN 613 584 848)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member M. Lothian
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	5 April 2018
<b>DATE OF ORDER</b>	5 April 2018
<b>CITATION</b>	Nu-Inovations Pty Ltd v Weather Masters Roofing Pty Ltd (Building and Property) [2018] VCAT 530

### ORDERS

- 1 The respondent, Weather Masters Roofing Pty Ltd, must pay the applicant, Nu-Inovations Pty Ltd, \$4,390.62 forthwith.
- 2 Should the respondent seek successfully to reopen this proceeding, the applicant is entitled to amend its claim, in particular to increase the claim for house tarpaulins in accordance with evidence for the applicant that their value is \$2,200 each.
- 3 **I direct the Principal Registrar to send copies of these orders and reasons to the parties by email.**

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

For the Applicant

Ms L Roberts

For the Respondent

No appearance

## REASONS

- 1 Proceeding BP1151/2017 was a claim by Weather Masters against Nu-Inovations for an allegedly unpaid sum of \$12,545.78, but this claim was withdrawn in accordance with orders made on 15 February 2018.
- 2 This proceeding is a claim by Nu-Inovations Pty Ltd (“Nulok”) for \$4,390.62 for alleged breaches of contract including defective work.

### Non-attendance by Weather Masters

- 3 There was no attendance for Weather Masters at today’s hearing, and neither was there at a directions hearing on 25 January 2018. A representative of Weather Masters, Ms Kim Armstrong, wrote to the Tribunal on both occasions to say that she would not be available. It is noted that Ms Armstrong is not a director of Weather Masters, but is a shareholder and demonstrated ostensible authority to act on its behalf.
- 4 Ms Armstrong was given the opportunity to attend the directions hearing by telephone but declined that opportunity. Her email of 3 April 2018 was answered by orders of 4 April 2018 which stated that the proceeding remained listed for 5 April 2018.
- 5 In the orders made both at the directions hearing of 25 January 2018 and in chambers on 15 February 2018, the parties were warned that if any party failed to attend the hearing would proceed.

### Background

- 6 Nulok is frequently a subcontractor in building contracts, supplying and installing slate or slate-like products for the cladding of roofs and walls. Weather Masters was frequently a sub-sub-contractor to Nulok.
- 7 For a number of months there was an arrangement between Nulok and Weather Masters where Nulok would enter a contract with a builder and sub-contract works to Weather Masters who would then install Nulok products. I accept the evidence of Ms Roberts, director of Nulok that she sent written purchase orders to Weather Masters concerning the various contracts they entered, but these were never signed for Weather Master.
- 8 I accept Ms Roberts’ evidence that Nulok ended the arrangement with Weather Masters and terminated all incomplete contracts because of breaches of contract by Weather Masters.
- 9 I accept her evidence that there were a number of occasions when Ms Armstrong communicated with parties with whom Nulok had contracted in ways that undermined the relationship between Nulok and its clients. I am also satisfied that none of the work undertaken by Weather Masters for Nulok was free of defects and that some of the work by Weather Masters was not undertaken or completed in a timely manner.

- 10 I am not satisfied that there were any sums which Weather Masters is entitled to set off against amounts payable to Nulok, except as provided below.

**Claim by Nulok**

- 11 In accordance with the evidence of Ms Roberts, I am satisfied that the total sum that would have been payable to Weather Masters if all work had been completed competently was \$73,791.30, of which \$55,858.56 was paid, in accordance with invoices sent by Weather Masters either in its own name or in the name of a related company, Carney Roofing Pty Ltd.
- 12 I am not satisfied that Weather Masters was entitled to charge sums for allegedly late payments by Nulok.
- 13 I am satisfied that Nulok was entitled to reduce the sum payable to Weather Masters for walls at Maxwell Street Northcote, by deducting \$12,975.60, leaving a balance payable to Weather Masters of \$4,957.14 before further deductions.
- 14 I am satisfied that Nulok has suffered a loss of equipment supplied to Weather Masters being 2 house tarpaulins, a Paslode nail gun and a site diary, totalling \$2,984.00.
- 15 I am satisfied that Nulok incurred costs of a further \$5,513.96 for rectification works necessitated by Weather Masters' poor workmanship or poor work practices.
- 16 I am satisfied that Nulok is entitled to recover \$4,390.62 from Weather Masters, calculated as follows:

Total sum payable by Nulok to Weather Masters		\$73,791.30
Less:		
Paid	\$55,858.56	
Incomplete work	\$12,975.60	
Equipment	\$2,984.00	
Rectification work	\$5,513.96	
GST on equipment and rectification	<u>\$849.80</u>	
		<u>\$78,181.92</u>
		\$4,390.62

**SENIOR MEMBER M. LOTHIAN**