

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP 597/2018

CATCHWORDS

Domestic Building Contracts Act 1995; section 8 implied warranties; dwelling constructed between 2011 and early 2012; whether building works are defective; whether paintwork is defective; whether maintenance issues.

APPLICANT	Pauline O’Dea
RESPONDENT	Brurob Nominees Pty Ltd (ACN 005 252 157) trading as Langford-Jones Homes
WHERE HELD	Melbourne
BEFORE	Member F Marks
HEARING TYPE	Hearing
DATE OF HEARING	13 November 2018, 25 March and 29 April 2019 and site inspection on 30 April 2019
DATE OF ORDER	30 May 2019
CITATION	O’Dea v Brurob Nominees Pty Ltd (Building and Property) [2019] VCAT 794

ORDERS

- 1 The respondent must pay the applicant \$5,817.
- 2 Costs reserved.

MEMBER F MARKS

APPEARANCES:

For the Applicant	Mr Jasiewicz, building consultant
For the Respondent	Mr Langford-Jones, director

REASONS

INTRODUCTION

- 1 The applicant (Owner) is the Owner of a dwelling house and land at Sunderland Bay on Phillip Island (Site). In June 2011 the Owner and respondent (Builder) entered into a major domestic building contract for the construction of a house on the Site (Contract). The contract price was \$186,950. Construction started in September 2011. A certificate of occupancy was issued on 21 March 2012.
- 2 After taking possession, the Owner complained of defects in the work. The Builder returned to the Site and carried out some rectification work. The Owner says the building work is defective and claims damages of \$43,532.70.
- 3 The Builder admits it carried out further paintwork in October/November 2016 but says that the paintwork is not defective. It says the Owner's house is located in a coastal area on Phillip Island close to the beach and requires ongoing maintenance. It says the Owner's claims arise from lack of maintenance.

THE HEARING

- 4 At the hearing the Owner was represented by a professional advocate and building consultant, Mr Jasiewicz, and gave evidence. Mr Langford-Jones, director, represented the Builder and gave evidence at the hearing. The Owner tendered the following reports but did not call the witnesses to give evidence:
 - Report from building consultant Kent Andersen, dated 26 July 2018;
 - Report from painting consultant, Edward Thomson, dated 21 November 2018;
 - Site inspection report prepared by Mr Duman and issued on 30 January 2019, following a Site inspection by A & L Windows–Doors.
- 5 The Builder tendered a report by Mr Anthony Croucher dated 18 October 2018. Mr Croucher was called to give evidence.

THE DEFECTS

- 6 Of the defects which the Owner originally identified, some have been rectified by the Builder and some have been abandoned by the Owner. The remainder are in dispute.
- 7 The Owner alleges the following items of building work are defective.

Item no	Item	Damages claimed
4	A and L Windows: cracks to 2 window sills	(part of paintwork – item 13)

11	Balcony: stainless steel wire and balustrade	\$9,450
	Window: water/moisture	\$350
12	External cladding boards	(included in item 15)
13	Exterior and Interior Paintwork	\$27,500
14	Meter box	\$3,257.70
15	Verandah support posts and kitchen and window cladding repairs	\$2,135
17	Contaminated and faulty water tank pump	\$840
	TOTAL	\$43,532.70

Item 4: Bedroom 1 and living room: cracks in A and L window frames

- 8 Mr Andersen's report identified a defective window sill in the living room with fill coming out of the timber. Mr Duman identified cracks on 2 window sills: one in bedroom 1 and the other in the living room. They did not explain why they considered the minor cracks to be the fault of the Builder. Neither Mr Anderson nor Mr Duman gave evidence at the hearing nor made themselves available for cross-examination.
- 9 Mr Croucher said buildings were, by their nature, dynamic and subject to movement. He said the house was built over 6 years ago and that environmental factors had a big impact on buildings located in coastal areas. He measured the cracks to be about 0.25 mm and within the gap allowed by the Guide to Standards and Tolerances 2015 (Guide) [10.01: gaps at butt joints and junctions].
- 10 Mr Croucher said the gaps were caused by general movement in the building and not by the installation of windows. He said one of the minor cracks needed filling and repainting and was a maintenance issue. In cross examination Mr Croucher denied that the foundations were defective and that the cracks had been caused by the movement of the foundations. I accept Mr Croucher's evidence.
- 11 I prefer the evidence of Mr Croucher to that of Mr Andersen and Mr Duman. I find that Mr Andersen's and Mr Duman's observations did not support their conclusions. The Owner did not file expert evidence about the foundations. On the evidence before me I am not satisfied as to this item.

Window: Bedroom 1: alleged leak

- 12 Mr Andersen's report identified a high moisture reading on the window frame said to be evidence of a leak. Mr Duman's report described the issue

on Site as being “water moisture reported by building inspector”. Mr Duman carried out an extended water test and found no evidence of water ingress. Nevertheless, he concluded that water damage was caused by the installation of the window. I do not accept Mr Duman’s conclusion which I find to be inconsistent with him not seeing water ingress. He appeared to base his conclusion on an unidentified building inspector’s report which he did not produce.

- 13 Mr Croucher inspected the property in October 2018 and December 2018 and found no evidence of water ingress. He said any moisture found by Mr Andersen may have resulted from a build-up of condensation resulting from the cold weather in July when Mr Andersen inspected the property.
- 14 Mr Croucher questioned Mr Andersen’s conclusion because Mr Andersen did not provide any details of the methodology used to measure the moisture or the actual reading from the moisture meter. In cross examination Mr Croucher did not change his opinion. I accept Mr Croucher’s evidence.
- 15 I prefer the evidence of Mr Croucher to Mr Andersen who did not provide evidence to support his conclusion. Neither Mr Croucher nor Mr Duman observed evidence of moisture or water ingress. I am not satisfied as to this item.

Item 11: Verandah stainless steel wire and balustrade

- 16 The Owner claims that the stainless-steel wire and balustrade have rusted because of the installation of inferior materials which do not comply with the relevant Australian Standard. The Owner said she hosed the wire and balustrade.
- 17 Mr Croucher said this item was not defective. He gave evidence that the stainless-steel wire and fittings forming the balustrade were tea stained, which he described as a discolouration of the surface by mild corrosion. Stainless steel used in coastal areas was much more prone to tea staining than other areas because the nooks and crannies trapped salt water present in the atmosphere when conditions were extreme. He considered stainless steel to be low maintenance but not maintenance free.
- 18 Mr Croucher said the stainless-steel wire and balustrade complied with the relevant Australian Standard. He said it should be washed regularly, at least once or twice a year as part of a normal maintenance regime for properties located in a coastal area.
- 19 Mr Croucher said hosing was not sufficient to wash and maintain the stainless-steel surface in the harsh coastal environment. He said it may be necessary to add detergent to the water and to use a mild steel wool to remove the tea staining. He said the worst of the tea staining was on the south face of the building which bore the brunt of the coastal weather.
- 20 I accept the evidence of Mr Croucher. I find that it was the Owner’s responsibility to wash the stainless-steel wire and fittings of the balustrade,

at least once or twice a year, not just with a hose, but with detergent. I find that the Owner needed to maintain the balustrade in the manner explained by Mr Croucher and did not do so. I find that the teas staining of the stainless-steel balustrade is a maintenance issue. I am not satisfied that this item constitutes a breach of the Builder's warranties .

Item 12: External cladding/boards

Separation of cladding joins

- 21 Mr Andersen's report identified cladding joins having separated in places, mainly on the west elevation, with gaps up to 5 mm and greater than the expected common movement. The report identified joins required sealing and painting to improve watertightness in accordance with the manufacturer's requirements.
- 22 Mr Croucher reiterated his evidence about the dynamic nature of buildings and the importance of environmental factors on buildings in harsh coastal areas. He said the cement-based cladding was James Hardy prime line heritage weatherboards and that the installation instructions required a 3 mm gap to be left between abutting weatherboards and the gap filled with a gap filler prior to painting. He did not observe any gaps of up to 5 mm. He said there should be a gap between boards to allow for expansion and movement. He said some gaps had opened up slightly and required refilling with a flexible gap filler as specified by James Hardie.
- 23 Mr Croucher considered the boards and paint to be in very good condition considering the coastal location and the fact that the house had been built over 6 years ago. Mr Croucher said the external cladding boards were not defective and were part of a normal maintenance regime. I accept Mr Croucher's evidence.
- 24 I prefer the evidence of Mr Croucher to Mr Andersen. Mr Croucher explained that the environmental issues such as moist salty air and sea spray affected homes in coastal areas, requiring a much higher level of maintenance than that required in non-coastal areas. While Mr Andersen acknowledged the extreme coastal conditions in which the property was located, he did not address the issue of regular maintenance. I am not satisfied as to this item.

Bowed cladding boards

- 25 Mr Andersen stated that the external cladding to the kitchen windows was bowed and defective and that 2 boards required replacing. Mr Croucher observed a slight bowing and said a nail had pulled out in one place because of the harsh coastal environment or, initially missed the fixing board. In his opinion this was easily fixed by re-nailing. I accept Mr Croucher's evidence.
- 26 Mr Langford-Jones said there that there was no level taken to show the bow or the size of the bow. He said that over a period of seven years from the construction of the house, some boards may move. He said the problem could have been alleviated by general maintenance.

- 27 I prefer the evidence of Mr Croucher to Mr Andersen. Accepting that a board has bowed slightly, I am not satisfied that the bowing has been caused by defective building work as the Owner's home was completed in March 2012. I am not satisfied that Mr Andersen considered the impact of the harsh coastal environment on the external cladding. On the evidence before me I am not satisfied as to this item.

Item 13: Exterior Painting

Mr Thomson's report

- 28 Mr Thomson's report identified the following items of defective paint on the exterior of the Owner's house: rough sawn free standing timber posts with poor paint coverage, patchy paint finish to the wall cladding on the west and east elevations not consistent with the specifications, major gaps to the boards, sap leaching from thinly painted base boards and paint flaking off the laundry and front door frames.
- 29 As to the cement cladding, Mr Thomson's report recommended pressure washing to remove dust and grime, raking out and refilling with W50 and repainting the affected areas to the nearest architectural break or recoating the complete elevation. Mr Thomson recommended light sanding and painting of the affected areas and the application of 3 coats of paint to new plasterboard because a two coat system was said not to allow the paint to reach its full potential –in terms of performance and colour depth. The paintwork was identified as not meeting industry standards.

Mr Croucher's response

- 30 Mr Croucher first inspected the property in October 2018 and again in December 2018 after being given Mr Thomson's report. He said volume Builders such as Langford Jones Homes, and the Contract between the parties, allowed for a 2-coat system.
- 31 He gave the following evidence. He has inspected more than 2000 homes at handover and was aware of how a 2-coat system should look and appear. The 2 coat system was not as good as a 3-coat system and should not be compared with a 5-coat system. In some cases, the paint coverage of a 2-coat system could be thin, but that was not the case here.
- 32 He reiterated that houses subjected to extreme conditions such as salt spray from breaking surf, were far more prone to deterioration and required a much higher level of maintenance than houses that were not located on the coast. The coastal location was extremely aggressive for finishes. He said that the sap leaching out of the baseboards may have been caused by being painted prematurely, but that was a consequence of the timber. He said the sap could be removed from the timber, but it would come back again.
- 33 In cross examination Mr Croucher said that the Contract only required 2 coats of paint, and that garden grade treated pine was a basic timber requiring

repainting 6 years after it was originally painted. He said this was a maintenance issue.

- 34 Mr Croucher said the exterior paintwork was excellent and had not weathered on the west side of the house under the overhanging balcony where it was protected. He said that if this area was an example of the level of paintwork at handover in 2012, then it was a very good paint job. He said some lifting of paint was to be expected after more than 6 years, particularly on the west side.
- 35 Mr Croucher said that the Guide provided that the minimum durability for external acrylic paint finishes was 36 months [12.05]. In his opinion the exterior of the house should be fully repainted at least every 5 years and preferably more often. He reiterated that the house was due for repainting and that the issues raised were maintenance issues. He did not consider the paintwork to be defective.

Conclusion

- 36 I prefer the evidence of Mr Croucher to Mr Thomson who did not make himself available to explain his conclusions and be cross examined. On the evidence before me I am not satisfied that the items identified by Mr Thomson are defective.
- 37 On my inspection of the Owner's house on 30 April 2019, I also observed the paintwork on the west side of the house, under the overhanging balcony, to be in very good condition. I also observed the exterior of the house which has been subject to harsh coastal environment since it was built well over 6 years ago.
- 38 The Owner's house is less than 1 km from the sea. The experts agreed that the coastal location is harsh. The Contract required a 2 coat system and I accept Mr Croucher's and Mr Langford Jones's evidence that a 2 coat system was provided. A 3 coat system may have a better finish but that is not what was agreed under the Contract or what the Owner paid for.
- 39 I also accept Mr Croucher's evidence that it was not possible to assess the original paintwork more than 6 years after the paintwork was done. I am not satisfied as to these items.

The Garage

Mr Andersen's report

- 40 Mr Anderson's report identified popped screws in the ceiling of the garage needing repair. The report also identified thin paint where plaster joins were said to be visible. Mr Croucher did not inspect the garage. I inspected the garage with the parties. The items were not easily identified. I found it difficult to observe the popped screws from a normal viewing position.
- 41 The Guide provides that nail popping in sheeting is defective if it exists at handover or occurs within the first 24 months of completion and can be seen

from a normal viewing position. There was no evidence of the state of the nails in the garage at the time of handover or up to March 2014 or in Mr Crowe's summary of defective items prepared by him following the Site meeting on 8 July 2015 which I set out in detail below. I am not satisfied that this item is a breach of the standard set out in the Guide.

- 42 Mr Andersen's report also identified insufficient primer and lack of paint on the door frames, trims and posts. He based his conclusion on the analysis of the laboratory report set out in Mr Crowe's email dated 1 October 2015. I am not satisfied as to this item for the reasons set out in paragraph 43 below.

Mr Croucher's response

- 43 Mr Croucher disagreed with Mr Andersen's opinion that paintwork on the door frames, trims and posts was defective. He said Mr Crowe's email dated 1 October 2015, set out the results of the tests carried out on paint samples of the timber railings only and not the door frames, trims and posts. I accept Mr Croucher's evidence and reject Mr Andersen's evidence. Mr Crowe's summary of the Site meeting on 8 July 2015 only referred to paint samples taken from the balcony rails. It stated:

Exterior : Balcony rails x 3 - kiln dried timber substrate in factory
undercoat – Flake sample provided (Difficult to provide quality sample)
and 1 photo provided. 2 coats of Sunfast Gloss. (CB Mountain Blue).
Refer email/lab report.

- 44 This is a maintenance issue and I am not satisfied as to this claim.

External painting- Timber handrails on the external stairs and balcony/verandah

- 45 The Owner claims that the paint on the timber handrails and rails is defective. It was not disputed that the handrails and rails were repainted by the Builder's painters in October/November 2016. Mr Andersen, Mr Thomson and Mr Croucher observed flaking and peeling of the handrails and rails when they inspected the Site. I also observed flaking and peeling when I inspected the Owner's house on 30 April 2019. The issue is whether the Builder is responsible for defective paintwork.
- 46 On 8 July 2015 the parties and Mr Paul Crowe, a former Valspar Trade paint representative, attended a meeting on Site to discuss the Owner's list of painting defects. Mr Crowe prepared an undated written summary in which he set out a list of defects prepared by the Owner and presented to them at the meeting (Mr Crowe's Summary).
- 47 Mr Crowe's Summary noted that a sample of the factory undercoated timber handrails had been supplied to his laboratory for testing. The note referred to an "email forward/lab report". Mr Crowe sent an email to the Builder dated 1 October 2015, which set out the results of the laboratory tests on the paint samples taken from the handrails. The laboratory report stated that the paint (Sunfast C/B Deep Ocean) had adhered to a light grey primer and that the

failure was due to the breakdown of the primer back to the timber. Dry film buds were also detected as being low and not in line with two coats.

- 48 The laboratory report recommended that all coatings be sanded back to the bare timber and oil based pink primer applied followed by two good coats of acrylic. It was not disputed that the primer had been applied to the timber before the timber was supplied to the Builder.
- 49 Mr Croucher agreed with the suggested rectification work to the handrails and rails, set out in Mr Crowe's email. However, he said the primer was a factory applied coating and that if the undercoat had broken down and separated then responsibility lay with the manufacturer and not the Builder. He said in any event the house was due for repainting, 6 years after being built, because of the extreme conditions which the house encountered in a coastal area.
- 50 Mr Croucher was unaware at the time of drafting his report, inspecting the Site and giving evidence, that the timber handrails on the exterior steps and on the verandah at the front of the Owner's house, had been repainted by the Builder's painter in 2016. The painters agreed that they had not completed the paintwork.
- 51 I accept each of the experts' evidence that the paint has flaked and peeled off the handrails and rails. When I inspected the property, the Builder's painters said that in late 2016 they had returned to the Site and painted the top, bottom and sides of the verandah rails and the external stair rails but had not completed the work when they left the Site in November 2016. The Owner gave evidence to that effect.
- 52 I reject Mr Croucher's evidence that the Builder was not liable for the paintwork failing on the timber handrails because the manufacturer supplied defective timber to the Builder. The implied warranties concerning all domestic building work, set out in section 8 of the *Domestic Building Contracts Act 1995*, form part of every domestic building contract. Here, the Builder warranted under the Contract that all material it supplies will be good and suitable for the purpose for which it is to be used [s8(b)].
- 53 I find that the paintwork on the timber handrail was not good and suitable for its purpose, irrespective of the fact that the Builder did not put the primer on the timber. I find that the Builder's painters failed to rectify the defective painting in 2016. I find that the paintwork on the handrails and rails and posts of the external stairs and on the handrails and rails of the upstairs balcony/verandah is defective. I find that the Owner has made out this claim.

Item 13: Interior painting

Mr Andersen's report

- 54 Mr Andersen's report identified insufficient paint coverage as plaster joins are said to be visible to the walls and ceilings in places. He identified

defective paintwork on the window sill in the living room which I have dealt with at paragraph 8 above and have found not to be a defect.

- 55 Mr Andersen did not identify the movement cracking as a defect. I am not satisfied as to this item.

Mr Thomson's report

- 56 Mr Thomson's report identified patchy and uneven paintwork in the entry and hallway, including the walls leading up to the living areas, the bedrooms, the living room/kitchen area and the laundry. He identified a "picture framing" effect around doors and window frames in some areas. The report identified paint lifting in bedroom no 4 on the floor plan. Mr Thomson recommended that most of the walls and some of the window sills and door frames be lightly sanded and repainted.

Mr Croucher's response

- 57 Mr Croucher gave evidence that when he visited the Site in October and December 2018, he found the coverage of the interior finish of the painting to be a good 2 coat finish and that it met industry standards. He did not observe any uneven and patchy paint finishes, picture framing or shading around the cornices.
- 58 Mr Croucher could not see the patchy and uneven areas referred to by Mr Thomson in his report. Mr Croucher observed in the entry of the hallway a slight difference in sheen where the wall cut in, which he said was not picture framing. He described picture framing as being a difference in the depth of colour around the windows and doors. Mr Croucher said the lifting of paint in bedroom no 4, was caused by tape being placed on the wall to show a join mark and in the course of being pulled off, lifting some paint from the wall. The Owner did not dispute Mr Croucher's evidence.
- 59 Mr Croucher said when he viewed the wall in bedroom 1 obliquely, he could see a difference in sheen where the plasterboard sheets joined but when he looked at the wall from a normal viewing position of 1.5 m or greater, he could not see a difference in the sheen. He said some very minor cracking had occurred in a few areas at sheet joins but considered that this should be seen as a normal maintenance item. He did not consider this to be a defect.
- 60 Mr Croucher said it was necessary to stand 1.5 m directly in front of the paintwork and observe the paintwork and plaster finishes on sheet joins from a normal viewing position in natural light. In doing this, he could not see any evidence of picture framing or defective painting. He said viewing the paintwork obliquely and subject to glancing light was not in line with the viewing requirements set out in the Guide [page 14 at F].
- 61 In cross examination when asked whether a 2-coat paint system resulted in their being different levels of sheen, he said that that if different applications of paint were used, such as a roller and brush, you could get a different sheen. However, he denied that the paintwork had not been applied in workmanlike

manner, that there was no undercoat, or that there was shadowing on the plaster joins. I accept Mr Croucher's evidence.

The Owner's evidence

62 The Owner conceded that the interior paintwork looked different at different times of the day and when the lights were turned on. She agreed that there was a difference in the paintwork when viewed from a normal viewing position as against being viewed from an oblique position or side on view. She said that at different times during the day she could see defects in the paintwork more easily than at other times.

Conclusion

63 The Guide provides that generally, variations in the surface colour, texture and finish of walls are to be viewed where possible from a normal viewing position. A normal viewing position is looking in this case at the paintwork from a distance of 1.5 m or greater, with the paint being illuminated by "non-critical light". Non-critical light means the light that strikes the surface is diffused and is not glancing or parallel to that surface [page 14 at [F]].

64 I inspected the interior of the Owner's house when I attended the view on 30 April 2019. I spent time in each room and the hallway and entrance to the Owner's house. I looked at each wall from a distance of about 1.5 m. I asked the Owner to point out the defects identified by her experts. The Owner was able to locate some of the alleged defective items. In other cases, she was not.

65 When I stood in an oblique position, I was able to notice some difference in sheen as observed by Mr Croucher. When standing in a normal viewing position with non critical light, I was unable to see the alleged defects. I observed the small area of paint which had lifted in bedroom no 4 which the Owner did not dispute arose from pulling tape off the wall.

66 I have accepted Mr Croucher's evidence. I find that the interior paintwork referred to in paragraphs 54 to 56 above, when viewed from a normal viewing position and in non-critical or natural light, is not defective. The Owner's house was completed in March 2012. Mr Croucher's evidence was that at the time of his inspection in late 2018 the paintwork was not defective. It was not disputed that some further paintwork was done in 2016. I, like Mr Croucher, have observed that paintwork from a normal viewing position. I am not satisfied as to this item.

Nail holes in the base boards

67 Mr Andersen identified nail holes in the baseboards which were not filled. Mr Andersen's report identified fixings or unfilled depressions caused by fixing as a defect in the painted or stained surfaces if they could be seen from a normal viewing position. He recommended that all nail holes in the baseboards be filled and repainted. Mr Croucher did not consider this item to be a defect. He said nail holes in base boards were not filled because the baseboards were rough sawn timber. I accept Mr Croucher's evidence.

- 68 Mr Crowe's Summary of the Owner's list of defective items, discussed at the on Site meeting on 8 July 2015, did not list this item. Nor was it raised by the Owner at time of the on Site VBA inspection arranged by Consumer Affairs Victoria in January 2015.
- 69 I prefer the evidence of Mr Croucher to Mr Andersen. Mr Croucher gave evidence and was cross-examined at the hearing. Mr Andersen was not called to give evidence or available to be cross-examined. I am not satisfied as to this item.

Nails rusting in the front verandah beams

- 70 Mr Andersen's report identified nails rusting in the front veranda beams and rust bleeding through the coating. He recommended the removal and replacement of the nails and cement sheet.
- 71 I observed there to be some rusting to the nails fixed to the front veranda beams. It was not disputed that the Builder's painters carried out rectification work in 2016. The repair work has not been successful. I will allow this item.

Nails rusting in front verandah cement sheeting

- 72 The experts did not dispute that nails in the cement sheeting in the ceiling were rusting and that rust had bled through the coating and into the cement sheeting. Here the issue is whether this item is a defect.
- 73 Mr Andersen stated that this was a defect. Mr Croucher disagreed. Due to the coastal conditions Mr Andersen recommended the nails and cement sheeting be removed and new cement sheet lining installed with stainless steel fixings.
- 74 Mr Croucher recommended spot treating with an appropriate enamel-based paint to seal the fastener with an acrylic topcoat applied over the top of the fastener. Mr Croucher was not aware that the Builder's painters returned in October/November 2016 and repainted the rusting fasteners in the cement sheeting on the front veranda. The problem has reoccurred.
- 75 I observed the rusting fasteners in the balcony ceiling at the Site inspection on 30 April 2019 in the presence of the parties and the Builder's painters. I find that the rectification work carried out at in October/November 2016 by the Builder's painter has not resolved the problem and that the item is defective. I find that the Owner has made out this claim.

Painting rectification costs

- 76 The Owner claims damages of \$27,500 for defective painting. She relied on a quotation from DX Painters dated 8 November 2018 for \$27,500 (DX Quotation) who she asked to quote on painting the entire interior and exterior of the house. The DX Quotation does not itemise any of the painting costs.
- 77 Mr Croucher said that if the Tribunal found the Builder to be liable for some defective paintwork, there was no need to repaint the entire house. He said that painting the entire house would be 50% or less than the DX Painter's

Quotation. He said that if paintwork was required under the eaves, or if the cement sheeting in the ceiling of the front verandah had to be removed, he estimated the cost of replacing the sheeting to be a few thousand dollars.

- 78 I have found the Builder to be liable for the defective paintwork to the 3 exterior timber hand rails and rails, the balcony/verandah handrails, rails and posts and the rusting nails which have caused rust to bleed onto the cement sheeting on the ceiling of the balcony/verandah and the front verandah beams. The Builder attempted to rectify each of these items in late 2016, without success.
- 79 The Builder tendered a purchase order dated 24 April 2019 (Purchase Order) which set out the following costs which I have used to calculate the costs of repainting the verandah/balcony and 3 exterior handrails and rails which require repainting. Mr Langford Jones said that the Purchase Order did not include a Builder's margin of 15%.
- 80 On the evidence available to me set out in the Purchase Order the rectification costs for rectification of the handrails and rails include:

Verandah/porch – (per m2) upper sec balcony	35.12 m2 @ \$9.72	= \$341.37
Paint/clear coat int balustrade-	4.2 lin @ \$28	= \$117.60
Handrail posts (per post)	each 33 @ \$10	= \$330
vertical balusters (per lin m)	12.78 lin @ \$14.55	= \$185.95
paint top and bottom rail only		
(for stainless steel balustrade)	38.62 lin @ \$6.00=	\$231.72
SUB TOTAL		\$1,206.64
Plus Builder's margin of 15%	\$181	\$1,387.64
plus GST	10%	\$139
TOTAL		\$1,526.64

- 81 As the Purchase Order was prepared for the Builder and not to its customer, I consider it fair and reasonable to increase the costs of rectification and will allow \$2,500.
- 82 Neither the Owner nor the Builder provided costing for the removal and replacement of the nails and cement sheeting with new painted cement sheeting. At the hearing Mr Croucher estimated cost of the removal and replacement of the cement sheeting to be a couple of thousand dollars. I will allow \$3,000. On the evidence before me I find that the Builder is liable to pay the Owner \$5,500 for defective paintwork.

Item 14: meter/power box

- 83 The Owner claims that the rusting meter box is defective. She says that the Builder has painted the meter box a number of times since construction of her home in 2012 and that it continues to rust.

- 84 Mr Andersen and Mr Croucher agreed that the rusting and corrosion was due to coastal conditions and the proximity of the property to the ocean. Mr Andersen recommended installation of a new stainless-steel meter box. Mr Croucher recommended sanding back the meter box and applying a rust converter paint and top coat with a number of coats of enamel.
- 85 There is no dispute that the meter box has rusted. The issue here is whether the item is a building defect.
- 86 Mr Croucher said the galvanised metal box complied with the specifications and regulations and that rust on the meter box was not a building defect. He said a stainless-steel meter box would address the issue but would tea stain. In cross examination, Mr Croucher agreed that powder coated galvanised metal was more durable than galvanised metal but did not agree that it was the norm. He could not guarantee that the issue would not re-occur with the powder coated surface. I accept his evidence.
- 87 Mr Langford-Jones said it was impossible to prevent rust at the beach and that the visual effect of rusting could be seen after 2 years. He said the Builder provided the Owner with preventative maintenance schedules for the interior and exterior of the house. I accept his evidence.
- 88 The Contract provided for a metal meter box of Builder's range and not a stainless steel meter box. I find that the Builder has installed a meter box that complies with the specifications. Mr Andersen, Mr Croucher and Mr Langford Jones considered that the meter box had been affected by the harsh coastal environment. On the evidence before me I am not satisfied as to this item.

Item 15: veranda support post

- 89 Mr Andersen identified that the ground was sunken around a veranda post to the south/west elevation and required rectifying by the pouring of concrete to be domed and to slope away from the post. He also identified some wood decay to one post on the west elevation said to be due to the ponding of water.
- 90 Mr Croucher said one of the 150 mm x 150 mm cypress veranda posts had shed some of the outer timber at ground level, but this did not appear to penetrate into the centre of the post. He said the cypress post had an inground life of at least 25 years and was termite resistant. He said whilst some shedding of one of the posts had occurred, it did not appear to have affected its structural integrity. Mr Croucher recommended monitoring the post for 12 months and replacing the post if further deterioration occurred.
- 91 Mr Croucher said that approved structural drawings had been followed and that Mr Andersen's suggestion for rectification was not compulsory. He said the issue could be dealt with by backfilling the depressed area with soil or by pouring concrete around the post. In cross examination Mr Croucher agreed that his method of rectification could result in the earth at the base of the post being depressed. I prefer Mr Croucher's evidence about the installation of the posts. He was able to be questioned about this item at the hearing and Mr

Andersen was not available for cross examination. I am not satisfied that the installation of the posts is a breach of the Builder's warranties.

- 92 I observed some wood decay to one post on the west side of the house and find that this post is defective. The Owner claimed costs of \$1,900 for the rectification of 6 posts. She relied on an estimate from PB Constructions set out in an email dated 8 March 2018. As the experts observed only one post with some wood decay, I will allow \$317 for one post.

Item 17: Faulty water tank pump

- 93 The water tank was replaced by the Builder in 2017 and refitted with the original pump. The Owner conceded that the water pump worked and that she did not have expert evidence to support her concern that the pump was faulty. The Owner did not provide any evidence to support her claim that the pump was not working, I am not satisfied as to this item.

CONCLUSION

- 94 I have found that the Builder is liable to pay the Owner \$5,817 for following defective paintwork:
- The timber handrails, rails and posts on each of the external stairs;
 - The front verandah/balcony handrails, rails and supporting posts;
 - The rusting nails bleeding rust into the cement sheet lining on the ceiling of the front verandah/balcony and verandah beam; and
 - Wood decay to one post on the west side of the house.
- 95 I will order that the respondent pay the applicant \$5,817.

MEMBER F MARKS