

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D711/2004

CATCHWORDS

Sale of partially completed Unit – purchaser’s complaints about workmanship – whether justified – rectification ordered

[2005] VCAT 650

APPLICANT	Pauline Micallef
RESPONDENT	Just Unique Constructions Pty Ltd
WHERE HELD	Melbourne
BEFORE	Senior Member R Walker
HEARING TYPE	Hearing
DATE OF HEARING	11 February 2005
DATE OF ORDER	15 April 2005

ORDER

1. Order the Respondent to carry out the following items of work as soon as practicable and, in any case, no later than 31 May 2005:
 - (a) close off the gap next to the vanity in the on-suite, trim the vanity to the door frame and finish the timber facing into the room with veneer to match the rest of the cabinet.
 - (b) remove the traces of mortar from the timber step at the foot of the front door jamb, sand the wood back to clean timber and paint it with a clear estapol or like material or with such other paint as may be agreed upon between the parties.
 - (c) paint the soffit lining in front of the front door so as to match the paint colour on the beading around the edge of the soffit.
 - (d) cover the gap where the timber supporting the verandah in front of the front door penetrates the Hebel wall with beading or timber, painted to match the timber member to which it is attached.

- (e) remove the bolt projecting from the Hebel wall next to the hot water service and make the wall good.
 - (f) clean off the bricks inside the garage where the bagging has come away and re-bag them to match, as far as practicable, the rest of the wall.
 - (g) cover the gaps between the garage ceiling and the brick walls with some sufficient material.
 - (h) remove the traces of mortar from the timber step at the foot of the door jamb for the French doors leading to the back yard, sand the wood back to clean timber and paint it with a clear estapol or like material or with such other paint as may be agreed upon between the parties and apply silicone to the underside of the step in order to prevent the ingress of rain water.
 - (i) replace all broken roof tiles
 - (j) remove gap in the vent in the second bedroom
 - (k) remove the bottom track of the linen cupboard, refix it level to the slab and adjust the doors accordingly.
2. All such work is to be done in a proper and workmanlike manner using good and sufficient materials.
3. Liberty to the parties to apply until 30 June 2005 for further orders or directions in regard to these orders.
4. No order as to costs.

SENIOR MEMBER R WALKER

APPEARANCES:

For Applicant

Mr Dahdah (the Applicant's Son-in-Law)

For Respondent

Mr Agius, Director

REASONS FOR DECISION

1. This matter came before me for a Small Claims hearing on 11 February 2005. The Applicant (“the Owner”) purchased her unit, being Unit 1, 37-39 May Avenue, Altona Meadows from the Respondent (“the Builder”) and the claim is with respect to a number of alleged defects. After hearing briefly from the parties at the Tribunal’s premises I went out to the unit and inspected it in the presence of the parties. Following the inspection I indicated to the parties that I would provide a written decision.
2. The Owner was represented at the hearing by her son-in-law, Mr Dahdah and the Builder was represented by its director, Mr Agius. Mr Dahdah told me that the Owner was not seeking a monetary order but rather, an order that the Builder attends to the defects that she alleges. They were as follows.

Main bathroom

3. The specifications attached to the contract refer to the vanity as having drawers. What has been supplied is a vanity with two large doors and no drawers. The Builder says that the Owner spoke to the cabinet maker about what was to be supplied and the vanity installed in the unit is the one she requested. I am not satisfied as to this part of the claim.
4. The specifications require a shower base 900mm by 900mm whereas Mr Dahdah has measured the shower base supplied as being 870mm by 870mm. Mr Agius says that a shower base is measured at the bottom, not at the top as Mr Dahdah has measured it. Having seen the shower base I am satisfied that it is in accordance with the specifications.
5. The vanity in the on-suite projects somewhat into the door space and is not trimmed to the door frame. There is a small gap which would permit the entry of insects and dust. It should have been finished off and I shall order the Builder to

close off the gap and finish the timber facing into the room with veneer to match the rest of the cabinet.

The front doorway

6. The front doorway has a sill on the slab which the complainant says has no covering or protection. This is true, but it is not usual to give any protection to such an item save for applying a varnish or paint (if a colour is required). There is nevertheless some mortar residue and what appears to be discolouration caused by cementitious dust. It should not have been left like that. I shall order the Builder to remove the traces of mortar from the timber step at the foot of the front door jam, sand the wood back to clean timber and paint it with a clear estapol or like material or with such other paint as may be agreed upon between the parties.

Soffit at front porch

7. The soffit lining outside the front door is inadequately painted. The cutting in around the edge beading has been done and is considerably darker than the paint in the middle of the underside of the soffit. Mr Agius suggested that this was due to someone else attempting to paint the beading but the Owner denies this is the case. It seems to be more likely than not that the painters simply forgot to apply a second coat of paint to the underside of the soffit and I will order the Builder to paint the soffit lining in front of the front door so as to match the paint colour on the beading around the edge of the soffit.

Front verandah

8. The timber supporting the verandah in front of the front door penetrates the Hebel wall and there is a gap of 15 to 20mm around it. This looks most unsightly and could also become a haven for wasps and other insects. It should be finished off with some beading or pieces of timber to cover the gap. I agree with Mr Agius that it should not be filled with mastic or like material because this would be most unsightly. The covering timber should be painted to match the timber member to which it is attached.

Damage to the hot water service

9. The hot water service was installed twice in that, when settlement was delayed, it had to be removed after its initial installation for fear of it being stolen. It has some small scratches and dents but these are very minor and do not affect its operation. There is however, a dynabolt placed in the Hebel wall which apparently did not provide a sufficient anchor and so a second bolt which is currently securing the hot water service was used. The first bolt is still projecting from the wall and looks unsightly. I shall order that it be removed and the wall made good but I make no order concerning the hot water service itself.

The garage walls

10. The internal walls of the garage are bagged and the bagging has come away in some sections. Mr Agius suggested that this could have occurred by use of a high pressure hose. There is no obvious reason why the Owner would have hosed the interior of a garage. In the area most effected there is a considerable deposit of what appears to be calcite on the surface of the brick. I shall order the builder to clean off the affected bricks and re-bag them to match as far as practicable the existing.

Gaps in garage

11. The walls of the garage seem to be single skin brick with pillars. The timber supports for the ceiling have been affixed to the interior face of the pillars. This method of construction has left a gap a brick wide between the cornice and the inside face of the brick walls between the pillars. This could become a haven for birds or other vermin and is also unsightly. It should not have been finished in this way. I shall order the Builder to cover these gaps with timber, fibro cement sheet or some other sufficient material.

The french doors and back step

12. The Owner says that the french doors from the living room to the back yard were rattling. Mr Agius returned and fitted some additional bolts to the doors but she

was still not satisfied and had another tradesman fit rubber seals. It is not established that the 'rattling' was due to any defect. However, the back door step is unsatisfactory in the same way as the front door step that is, it is dirty from mortar and builder's debris and has not been cleaned and painted. I shall order the same work be done as for the front door step and in addition, since this door is exposed to the elements and has a slight gap between the slab and the underside of the step, I shall order the Builder to apply silicone to the underside of the step in order to prevent the ingress of rain water.

Laundry door

13. The laundry door outside was said to be not locking and was readjusted. I have insufficient evidence as to this item.

Gaps in kitchen

14. There are said to be gaps above the refrigerator and behind the cupboards in the kitchen that are required to be blocked off. I was not shown this item at the inspection and I have insufficient evidence to make a decision on it.

Adjusting kitchen cupboard doors

15. Kitchen cupboard doors will commonly require adjustment and the mere fact that they needed adjustment on this occasion does not necessarily mean there was a defect.

Windows

16. The Owner complains that the windows in the main bedroom should have been sliding windows. I accept Mr Agius' evidence that at the time she agreed to purchase the Unit the windows were installed and they were clearly cantilever windows. I think she has agreed to accept the windows that were installed.

Broken roof tiles

17. I noted 8 broken roof tiles on my inspection. Each one was broken in the same way namely, a small corner was broken off on the tile next to the gutters. I do not accept Mr Agius' suggestion that this might have occurred while cleaning the gutters. There are no large trees for other obvious sources of material that might have needed to have been removed from the gutter so any cleaning activity is unlikely to have been extensive. I think it is much more likely that the tiler used those tiles for the bottom row where the chips in the bottom corners would be obscured by the gutter, possibly in the hope they would not be noticed or believing that if they could not be seen the chips would not matter. The owner is entitled to receive unbroken tiles and the broken tiles must be replaced. Another roof tile had come loose at the end of the side path. I was able to push it back into position. I am not able to find that there was defective workmanship in regard to this tile since it does appear to have originally been mortared into the ridge capping.

Wire in the garden bed

18. This was a telephone cable that Mr Agius removed during the inspection.

Air vent

19. In the ceiling of the second bedroom there is an air vent that appears to be too small for the gap cut in the ceiling to receive it. It may be, as Mr Agius suggested, that the vent has simply become displaced and could be easily pushed back into position so as to cover the hole. Even so, this must be done and I will order that it be done.

Doors of the linen press are not vertical

20. The doors run on wheels at their base which in turn run on a bottom track. This track was not fixed horizontally to the slab but kicks up at one end. In order to ensure that the door meets the side of the frame, one of the wheels has been adjusted up considerably more than the other. The end result is most unsightly

because it shows an uneven gap under the door. I shall order the builder to take out the bottom track and refix it level to the slab and adjust the doors accordingly.

Bedroom shelf

21. In the third bedroom, the shelf inside the built-in robe has not been secured. I accept Mr Agius' evidence that this was at the Owner's request since she wished to store tall items in the robe. It is not a defect. The shelf presently sits by gravity on the supports and is functioning adequately. If it were desired to fix it to the supports this could be done very easily.

Landscaping

22. The Owner complains that her unit was not landscaped. Mr Agius says that he was not contracted to do so but that he did give the Owner some soil when he did the landscaping for his own two units at the rear. Having looked at the contract I cannot find any obligation on the part of the Builder to landscape the Owner's unit.

General

23. There was a lot of discussion as to whether or not the Owner had permitted entry to the Builder's tradesmen but I do not need to resolve that. Whether entry was permitted or not, if the work is defective it is defective and refusal of entry to tradesmen goes only to the question of costs of any litigation. Here the parties represented themselves so there were no costs. In any event, it was agreed on site that for the work that needs to be done, Mr Dahdah will be present to ensure that access is now given. I should add that the general standard of construction seemed to be good, apart from the items to which I have referred.

SENIOR MEMBER R WALKER