

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D239/2011

**CATCHWORDS**

“Kitchen”, work to be done under the contract, alleged building defects

<b>APPLICANT</b>	Maria Ella Pearmain
<b>RESPONDENT</b>	AJ Solutions Pty Ltd (ACN 141 342 332)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member M. Lothian
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	30 June 2011
<b>DATE OF ORDER</b>	15 July 2011
<b>CITATION</b>	Pearmain v AJ Solutions Pty Ltd (ACN 141 342 332) (Domestic Building) [2011] VCAT 1363

**ORDERS**

- 1 I direct the Principal Registrar to note that the Applicant’s family name is Pearmain.
- 2 The applicant must pay the respondent \$240 forthwith.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

For the Applicant	Ms M. Pearmain in person
For the Respondent	Mr M. Leslie, Director in person

## REASONS

- 1 In 2010 the applicant Owner engaged the respondent Builder to install a kitchen in her home. The contract sum for the kitchen including variations was \$15,564.01. The parties agree that if the kitchen had been installed on time and in accordance with the contract, \$6,564 would be payable to the Builder.
- 2 The Owner's claim is for \$9,400 on the basis that "job so bad need pulling out and re-start again". She relies on a report by Mr Mamone of 21 January 2011, an architect who has provided a report through Archicentre. The Builder's counter-claim is for \$6,564.
- 3 The relationship between the parties soured, at least in part, because of the time it took the Builder to complete the work and because there were issues over precisely what the Builder was to do. I am not satisfied that there were good reasons for the Builder's delay. Because of the delay, I find that the Owner should be entitled to have completion and rectification work undertaken by a builder other than the respondent. The Owner therefore is entitled to the cost to her of having such work undertaken. I find that a reasonable cost for a substitute builder is \$70 per hour or \$560 per day, inclusive of GST. I note in particular that the Builder's paper-work is poor and its quotation of 8 October 2010 is far from clear.
- 4 Although the Owner's claim was for \$9,400, she was unable to say how she reached the component of this figure for work that is still to be undertaken. She provided two lump-sum quotations. One is from Neil Kidman, a franchisee of Jim's Building Maintenance, for \$4,015 that does not include all the items she claims. The other is from Brocon Developments for \$11,780. It is not clear whether the Brocon quotation includes all the items she claims, and it specifically includes "Provide complete new 40mm marble bench top" which the Owner said she is not claiming.

### The description of the work to be done

- 5 The relevant parts of the quotation dated 8 October 2010 are:

#### **Scope of Works**

##### **1. Kitchen**

- Remove existing kitchen
- Supply and install L shaped kitchen as per attached layout
- Supply and install sub-strait for bench (client to supply bench)
- Supply and install tiles around worktop
- Supply and install plaster
- Remove flooring and re-lay new (note one day allowed only additional labour @ \$48/hour)
- Install new window

***Sub Total Labour And Materials \$7540.56***

**2. Other**

- Remove all rubbish from site \$360
- Associated plumbing works outside and internal \$697.89
- Install shelves above the fridge \$220
- Supply and install 3 end panels \$293.67
- Install new door \$554.95

Note door and window supplied at cost +5%

***Sub Total Labour and materials \$2900.51***

Sub total \$10,441.07

GST \$1,044.11

Total \$11,485.18

- 6 A document entitled tax invoice dated 7 December 2010 invoiced the Owner for \$10,441.07 and also for additional items being “supply window at \$2,668.03 and replace weatherboards and paint at \$1,040”.

**Meaning of "kitchen"**

- 7 The Owner's submissions about the extent of work to be undertaken by the builder are much more extensive than the work the Builder submitted it was obliged to do.
- 8 I am not satisfied that the reference to “kitchen” in the quotation means a complete renovation of the whole room called the “kitchen” including everything in it. For example, the parties agree that the Builder’s obligations did not include replacement of the range-hood, which had been installed about two years previously. I find, rather than, that the parties agreed that the builder would supply and install new kitchen cabinets, some appliances and undertake some make-good works.

**Alleged defects**

- 9 The following alleged defects are from the report of Mr Mamone.

**Floor**

- 10 I accept Mr Mamone's report that the floor is quite uneven. Although item 1 of the quotation includes "Remove flooring and re-lay new (note one day allowed only additional labour @ \$48/hour)" I find the agreement between the parties was that the Builder would remove the vinyl floor covering and polish the boards, not undertake the significantly more expensive job of rectifying the sub-floor to make the timber floor level. Nevertheless, the floorboards need a further sand and polish, and the oven must be removed to enable this work to be done beneath it.
- 11 I allow the Owner \$500 for this item.

### Internal walls and ceiling

#### Dog door

- 12 Mr Leslie of the Builder admits that the dog door does not lock from inside and the timber skirting needs to be installed. I allow two hours labour and materials of \$20; a total of \$160.

#### Plaster

- 13 I am not satisfied that the Builder's obligation was to replace all plaster in the kitchen, but find that it was obliged to replace or repair the plaster to the south and west walls of the kitchen. I specifically find that the Builder was not obliged to undertake repairs to the kitchen ceiling. I accept Mr Leslie's evidence that repairs to the south wall near the window will take approximately half a day with materials of around \$20. I allow three quarters of the day to include repairs to plaster near the dog door, a total of \$420.

#### Electrical

- 14 I accept the Owner's evidence that she has paid \$687.50 to an electrician, all of which work should have been undertaken by the Builder with the exception of installation of down-lights, for which I deduct \$87.50. I allow the Owner \$600 for this item.

#### Plumbing

- 15 I accept the Owner's evidence that she has paid \$150 for plumbing, which should have been undertaken by the Builder and I allow that sum.

#### Architrave around window

- 16 I accept the Owner's evidence that she has had this work undertaken but note that she cannot separate the item from other items for which she claims to have paid \$851. I allow one and a half hours labour plus materials of \$40 in accordance with Mr Leslie's evidence; a total of \$145. I make no separate allowance for rectification of the irregular edge wall tiles butting up to the window, which should have been covered by the architrave. The photograph provided by the Owner was before the order architrave was installed.

#### Power Point to the left of the kitchen window

- 17 This has been taken into account above under "electrical".

#### Down light not installed

- 18 I accept Mr Leslie's evidence that the down light was not part of the contract, and make no allowance for it, as stated above under Electrical.

### Installation of oven and range hood

- 19 I accept the Owner's evidence, which is not contradicted by the Builder, that the braided gas line to the oven must be clipped to the bottom of the oven and that safety chains must be installed. I accept Mr Leslie's evidence that the work will take two hours and I allow \$140.
- 20 I am not satisfied that the Builder has failed to undertake any necessary work concerning the range-hood, and I make no allowance for it.

### Kitchen cabinets

- 21 I accept the evidence of the Owner and of Mr Mamone in his report that the top surface of the kitchen cabinets is unacceptably out of level. Given that the parties agree that the floor was seriously out of level and that the Builder attempted to scribe the base of the cabinets onto the floor, I allow three days work for the carcass to be removed, scribed further and replaced; a total of \$1,680.
- 22 I specifically make no allowance for damage to the marble bench top that the Owner had installed, against the advice of Mr Mamone.
- 23 Although I find that the time allowed is sufficient for all repairs to the kitchen cabinets, I also allow \$15 for materials to rectify the poorly sealed gap in the cabinet beneath the sink and \$70 for a new door in the corner beside the oven.
- 24 I allow a total for the kitchen cabinets of \$1,765.

### Window

- 25 I am satisfied that there is poor painting to the window which requires rectification. I accept Mr Leslie's evidence that the rectification work will take approximately one day for which I allow \$560 plus paint of \$40; a total of \$600.

### Window ledge

- 26 I accept the evidence of Mr Hay that the window ledge sheds water back towards the house and also that the timber is bleeding. I allow \$300 for replacement of the window ledge.

### External wall

- 27 I note the evidence of Mr Mamone in his report that there are a number of defects with the weatherboard wall to the north of the kitchen. I further note the admission of Mr Leslie that the waste pipe penetration needs to be sealed, the garden tap needs to be fixed onto the weatherboards and the joints and ends of weatherboards need to be adequately sealed. I accept his evidence that the work would take approximately one day. I allow \$560, plus materials of two tubes of silicon being \$16 and paint of \$60; a total of \$636.

Financial reconciliation

Owing to Builder		\$5,656
Builder must allow Owner:		
Sand and polish kitchen floor	\$500	
Works associated with dog door	\$160	
Plaster	\$420	
Electrical	\$600	
Plumbing	\$150	
Architrave around window	\$145	
Works to oven	\$140	
Rectification of cabinets	\$1765	
Rectification of point to window	\$600	
Replacement of window ledge	\$300	
Rectification of external wall	<u>\$636</u>	
	\$5416	<u>\$5416</u>
The Owner must pay the Builder		<u>\$240</u>

**SENIOR MEMBER M. LOTHIAN**