

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. D321/2012

CATCHWORDS

Domestic building – sale by owner-builder within prescribed period – *Building Act 1993* – s.137C –
nature of warranties – extent of owner-builder’s liability

APPLICANT	Mr Leonard James Price
RESPONDENT	Ms Donna Therese Goodrem
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Hearing
DATE OF HEARING	6 – 8 October 2014
DATE OF ORDER	13 November 2014
CITATION	Price v Goodrem (Building and Property) [2014] VCAT 1409

ORDER

- 1 Order the Respondent to pay to the Applicant \$66,536.50.
- 2 Costs reserved.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicant	Mr L.M. Stanistreet of Counsel
For the Respondent	Ms D. Goodrem in person and Mr P. Vosti, husband of Respondent

REASONS

Background

1. The Applicant is the owner of a dwelling house in Mount Eliza (“the House”) which he purchased from the Respondent by a contract of sale dated 24 July 2007.
2. The Respondent had purchased the House herself some years earlier. Then, with the assistance of her husband, Mr Vosti, she carried out extensive renovations pursuant to architectural drawings in order to convert it from a single storey house to a double storey house with open plan living in a very modern style and appearance. The work was completed in approximately October 2005.
3. This work was carried out by the Respondent as an owner-builder using sub-contractors. By the operation of s.137B of the *Building Act* 1993 (“the Act”), in order to be able to lawfully sell the House, the Respondent was required to:
 - (a) obtain a building report from a prescribed building practitioner as to its state and condition;
 - (b) provide a copy of the report to the intending purchaser;
 - (c) obtain the required domestic building insurance; and
 - (d) set out in the contract certain warranties that are, in any case, implied and imported into the contract by s137C of the Act.
4. The warranties to be set out in the contract of sale were as follows:
 - (a) the vendor warrants that all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner;
 - (b) the vendor warrants that all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) the vendor warrants that that domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, this Act and the regulations.
5. By s137D of the Act, the insurer was not to be liable for any defects referred to in the report obtained pursuant to s.137B.
6. Pursuant to these requirements, the Respondent obtained a report which identified no defects in the House.
7. The Applicant now claims that the building work carried out by the Respondent was defective and seeks damages for breach of the statutory

warranties. The damages sought are what is claimed to be the cost of rectifying the alleged defects.

Hearing

8. The matter came before me for hearing on Monday 6 October 2014 with five days allocated. Mr Stanistreet of Counsel appeared for the Applicant and the Respondent appeared for herself, assisted by her husband, Mr Vosti. After a short opening by Counsel I visited the House on the first day of the hearing and had the alleged defects pointed out to me.
9. On the second and third days I heard evidence from the Applicant, the Respondent and the experts.
10. Expert evidence was given concurrently. I heard the evidence of Mr Lorich, the building expert for the Applicant together with that of Mr Kosa, an architect for the Respondent. Mr Lorich was assisted in the plumbing aspects of this evidence by Mr Collecute, an hydraulics engineer.
11. Plumbing evidence was given by Mr Collecute together with a Mr Williams, who was the plumber who carried out the plumbing work on the renovation for the Respondent and gave evidence on her behalf.
12. Electrical evidence was given on behalf of the Applicant by Mr Blaney, who gave his evidence together with a Mr Thorpe, who was the Respondent's electrician who carried out the electrical work for the renovation and gave evidence on her behalf.
13. Evidence concluded on the third day, 8 October 2014 and I reserved my decision.

Findings

14. The claims made are for damages for breach of one or other of the statutory warranties set out above. These warranties are both set out in the Contract of Sale and are implied into the contract by s.137C of the Act. As a careful reading of those warranties will show, they are confined to the building works that were carried out by the Respondent. They do not extend to work that she might have done but failed to do. In the present case complaint is made that the Respondent did not upgrade some of the plumbing or electrical wiring of the existing house. In each case, such a failure could only be found to be a breach of a s.137C warranty if it could be established that, in order to do the new work that she did do in a proper and workmanlike manner, the existing work had to be upgraded. That would need to be established by expert evidence.
15. A Scott Schedule was prepared by Counsel and formed the basis of the presentation of the expert evidence. The numbering system used was taken from Mr Lorich's first report. Items 1, 4, 7, 11, 13, 15, 16, 19 and 20 were withdrawn. My findings in regard to the remaining items follow.

Sewerage pipes

16. There are two redundant terra-cotta sewerage or drainage pipes visible at the surface of the ground at the rear of the House. The Applicant has placed an aluminium grate over the top of one of them and the other is open. Mr Lorich said that these ought to have been removed at the time the plumbing was upgraded or, if they were to be left, they should have been capped and made good. He assessed the reasonable cost for carrying out the work that he said was required as being \$2,020.
17. Mr Kosa said that, on his instructions, the pipes were present in the ground at the time the Respondent herself purchased the property and that they do not form any part of the work that she had carried out. That was confirmed by the Respondent's evidence.
18. Since this was not part of the work the Respondent did and since the expert evidence does not establish that, in order for the new work to be done in a proper and workmanlike manner these pipes ought to have been removed or capped, there is no breach of warranty in failing to remove or cap them.

Front steps

19. The entrance to the House is gained from a flight of timber steps leading from the front entrance driveway up to the timber deck at the front door. All of the risers are 190mm high except for the last one which has been measured by Mr Lorich at 135mm high and by Mr Kosa at 140 mm high. Mr Lorich said, and Mr Kosa did not dispute, that the Building Code of Australia requires the risers to be uniform. Mr Lorich said that the top riser was a tripping hazard and was very dangerous.
20. Mr Kosa pointed out that each step had an aluminium nosing to highlight where the step was and to draw the attention of anyone to the different heights. That is certainly so but the steps are nonetheless non-compliant. When I was on site another issue raised in regard to this flight of steps was the complete absence of balusters between the stringer and handrail on each side. Again that is in breach of the Code but it does not form part of the claim.
21. Mr Lorich has costed for the demolition and reconstruction of these steps at a price of \$6,682.50. Mr Kosa said that the cost to alter the stairs is excessive given that there has not been an issue to date. He said that an application could be made to the Building Appeals Board to vary the regulation so as to allow the steps, as built, to remain. He has costed such an application. Mr Lorich said that he doubted that a dispensation would be given in this instance because of the substantial difference in the height of the top riser. In addition, Mr Stanistreet drew attention to the Applicant's advanced age and the tripping hazard identified by Mr Lorich.
22. I am satisfied that the steps are non compliant and as such that there has been a breach of the statutory warranty. In the circumstances I am not satisfied that an application to the Building Appeals Board provides an

answer to the claim. The measure of damages is the cost to bring these steps into compliance, which is Mr Lorich's figure, and that shall be allowed.

Roof

23. The House is roofed at several levels with a "Cliplock" style of tray roofing material. The intended fall of each roof is 1°. Over the entrance portico there is a roof made from a corrugated material. There have been various leaks through the roof but no definitive finding as to where those leaks are coming from. Suspicion has fallen variously upon the box gutters, the absence of insulation, roof penetrations caused by the Applicant installing solar panels on the roof and also deficient flashing.
24. During the on-site inspection I climbed onto the topmost roof and inspected the manner in which the solar panels had been fixed. I also examined the box gutters and the various roof surfaces.

The Bedroom One roof

25. The first issue was a small roof over Bedroom One that Mr Lorich said was rusting. On inspection I could see that the roof was dished in the middle and was not draining. The middle of the roofing sheet where water appears to have been ponding looked rusty. Mr Kosa suggested that the discolouration was pigment from the render colour and possibly other material transported to where the water was ponding. I rubbed the surface and it appeared to me that the underlying colour was rust as suggested by Mr Lorich, although there might have been other materials mixed with it. It appeared to be conceded that the roof has to be replaced and properly graded. Mr Lorich assessed a figure of "just under \$1,000" to replace this single roof and I did not understand Mr Kosa to dispute that figure. I will allow \$950.00.

Sisalation

26. The next issue was the roof as a whole. Mr Collecutt said that the sisalation laid underneath the metal sheets of the roof did not extend into the adjacent box gutter. I tested this on site and I found that for most of the length of the box gutter where I ran my fingers I could feel the sisalation extending into the gutter although on one spot it appeared to me to have been folded back for a short distance. Mr Williams said that he had installed this sisalation correctly and had extended it into the gutter. From that evidence it seems to me likely that the part that I found to have been folded back was dislodged during installation.
27. I was not told what should be done about that but lifting the sheet and straightening out a fold in the sisalation, would not seem to be a significant issue. Whether that in itself would be causing any leakage problem is unclear. It was acknowledged that the sisalation was supposed to be extended to the box gutter and turned into it. It was not disputed that there has to be a gap left between the sisalation and the metal roof. As it was described in evidence, the sisalation is intended to be draped over the battens so as to leave an air space there. The sisalation is in lengths laid side

by side that are overlapped and may be taped together. In those circumstances, in view of the minimal fall of this sort of roof, I cannot see that the sisalation is going to be particularly effective to prevent water from entering the roof space through the joins in the strips of sisalation. In any case, the evidence is that it is there for insulation, not waterproofing.

The absence of an insulation blanket

28. The other issue was whether there should have been an insulation blanket installed. Insulation batts were laid directly above the ceiling but both Mr Lorich and Mr Collecutt said that it was good practice to install an insulation blanket as well as the batts and sisalation. Mr Williams said that he would use either an insulation blanket or batts but that he would only use both if the client wanted it.
29. Although on the evidence I must find that it is good practice to add this extra layer of insulation in addition to the ordinary insulation batts above the ceiling, I cannot find that by leaving it out the work has not been done in a proper and workmanlike manner. This is a not a claim in contract, but rather, a claim under a statutory warranty that the work must be done in a proper and workmanlike manner and the onus of proving a breach of the warranty is on the Applicant.

The solar panels

30. Whether the roof penetrations that were made in the course of attaching the solar panels have caused any of the leakage that has been experienced is unresolved. The panels were not installed by the Respondent but by someone engaged by the Applicant some time after purchasing the House. The legs of the framework supporting the panels were, as both Mr Kosa and Mr Williams pointed out, sitting in the trays of the roof and the bolts intended to secure them to the roof have penetrated the roofing sheets at those places.
31. Apart from some pieces of black material that Mr Kosa suggested was neoprene, I could not see any sealant to prevent water penetration through the places where the bolts securing these feet to the roof were screwed. Mr Kosa produced one photograph showing what appeared to be a loose bolt and said that that bolt was loose. In view of the manner in which these solar panels had been fixed, I must find that it is possible that water is penetrating through these holes.
32. Whether and to what extent the penetrations of the roof by the solar panel bolts are contributing to the leakage problems is impossible to say but neither Mr Lorich nor Mr Collecutt defended the manner in which the solar panels have been anchored.
33. I should add that the panels are on an angle and I accept Mr Kosa's evidence that when subjected to strong winds they may well place a substantial strain on the bolts connecting them to the roof. Mr Williams

suggested that the roof was dished in the area where these legs were anchored. I could not see that on site but the fall of the roof is very slight

.The box gutters

34. Another issue was whether the main box gutter running north south along the eastern boundary of the House was adequate. The drawings required it to be 350mm wide and 100mm deep whereas as constructed, it is only 270mm wide and 100mm deep. Mr Lorich considered that this might have contributed to the water penetration. Mr Collecutt said that on his calculations the dimensions of the box gutter were just adequate. Mr Williams acknowledged that the box gutter he constructed was narrower than the plans required but said that he thought that he had increased the depth. It did not appear from my inspection that the depth had been increased although I did not measure it.
35. Since Mr Collecutt said that the dimensions are adequate I cannot find any defect on that account. It was open to the Respondent to construct the box gutter smaller than her plans specified. There is no implied warranty under s137C that the House was constructed in accordance with the plans that she had. It is not known whether the building surveyor specifically authorised this departure from the plans. He would have been able to do so if the box gutter as constructed complied with the Building Code of Australia and it would seem from Mr Collecutt's evidence that, in terms of the dimension of the gutter, it did. Mr Williams said that the width of the box gutter was dictated by the truss design and the engineer's design. It is not uncommon for alterations to be made on site in order to get the design to work and there is no difficulty with that.
36. The next issue with the box gutter is the riveting of the joints. According to Mr Collecutt these rivets should have been spaced no more than 40mm apart and his evidence, which is borne out by the photographs that he produced, is that they are more than that. He said that additional rivets will have to be inserted and the joints opened if necessary for additional siliconing. The precise scope of work is uncertain but it is not major.
37. The other aspect of the box gutter was that the outlets into the rainheads do not fully comply with the requirements of AS3500.3. According to Mr Collecutt the outlets have to be the same dimension as the width of the box gutter. Mr Williams said that his practice is to ensure that the overflow from a rainhead is the same size as the downpipe into which the rainhead drains. Mr Kosa helpfully provided me with a copy of the relevant Australian Standard which confirms the correctness of Mr Collecutt's evidence although, as Mr Kosa pointed out, there is some confusion in the way it is drawn in regard to small rainheads. It appears that the leaking has diminished since the outlets were widened
38. I accept Mr Collecutt's evidence that the outlets from the rainheads need to be increased further. I asked him what that would cost and he said that it was in the hundreds rather than the thousands. I will allow \$750 to alter the

outlets from the rainheads and also re-rivet the joins in the box gutter which are insufficiently riveted.

The roof over the front door

39. The flashing of the small roof canopy over the front entry door is said to have failed where it meets the wall and water is passing through it at that point. The difficulty with flashing this area is due to the polystyrene lightweight foam construction of the upper storey. Mr Collecutt acknowledged that the appropriate course would be to put a flashing that could be siliconed at the top that was sufficiently rigid to prevent distortion due to the fact that there were few points within the wall of the House upon which to anchor it. Mr Williams said that he had done that and the photograph Mr Collecutt produced tends to support that.
40. I accept Mr Williams' evidence that what is required here is to replace the silicone which should not cost more than a few dollars. In view of the time since the work as done this seems to be a maintenance item rather than a defect.

Missing spreader

41. The final issue to do with the roof is the discharge from an upper roof onto a lower floor through a single downpipe that does not have a spreader attached to it. Mr Williams said that he thought that he had attached a spreader and suggested that perhaps it had been removed by the person who installed the solar panels. The conduit carrying the cable from the solar panels runs along a ridge of the roofing material directly in front of the downpipe. It was suggested that perhaps Mr Williams had provided a spreader at this point and it has been removed. In view of this possibility I am not satisfied that it is established that no spreader was originally supplied.

Conclusion as to the roof

42. I suggested to the experts that, since sisalation is laid under the roof sheets, any water entering the roof space would be likely to track its way along the sisalation and exit wherever there was a join or a hole in it. I understood the experts to agree that that would probably be the case. That being so I cannot say that water penetration seen at a particular point in the internal finishes establishes that the roof is deficient at that location.
43. Quite obviously, the roof penetrations made by the person who installed the solar panels should be made good and a spreader should be installed at the bottom of the downpipe from the upper roof. Otherwise, I am quite unable to identify the source of the leaking from the evidence that has been given and so I cannot find that the roofing is defective except in the particular respects that have been identified.
44. Damages with respect to the roof are:
 - (a) Replace Bedroom One roof \$950.00;

- (b) Straighten the sisalation \$150.00;
 - (c) Box gutter \$750.00.
45. I am not satisfied that it has been demonstrated that the roof needs to be removed and replaced in order to install an additional insulation blanket because I am unable to find that the absence of the blanket means that the work is defective. That part of the claim fails. However the defects listed are established

External power point

46. There was a claim in regard to an external power point which, according to the Applicant, was not properly waterproofed, allowing water to run down a wire and short circuit the power supply to the House. The electrician who came to attend to the emergency identified the problem and replaced the power point at a cost of \$120.
47. The Respondent's evidence was that the power point was there when she bought the House and it was not part of the work that she carried out. This was supported by Mr Thorpe and there being no contrary evidence I must accept that to be the case. Accordingly the statutory warranty does not apply.

The polystyrene cladding and rendering

48. The bulk of the external cladding of the upper level extension is polystyrene foam panels that have been rendered. The manufacturers and suppliers of the polystyrene panels, the render and the mesh used to make up the cladding are unknown.
49. It was apparent on inspection that the render covering the foam is quite thin. The render thickness varied from two millimetres to five millimetres. Mr Lorich said that this was inadequate as most manufacturers require a build up of from five to six millimetres, built up in a number of coats. He suggested that the extra thickness at the bottom was due to the material dropping with gravity after application.
50. Mr Lorich said that the reinforcing mesh can be seen in various areas and pointed out some spots to me where I could see it. He said that there was no window flashing installed apart from caulking between the frame and the render coat but, as the evidence proceeded, I understood him to say that that was inevitable due to the type of cladding system used, which is, in effect, a face seal system. Consequently I do not find the absence of flashing to be a defect in itself.
51. Mr Lorich pointed out to me where the render has delaminated on some of the window sills. He pointed out cracks at the rear of the House where the finish also looked quite rough and the panels could be seen through the very thin render. This contrasted with the front of the House where the finish appeared to be a lot better. There were a number of cracks, all of them less than one millimetre wide.

52. Mr Kosa pointed out, correctly, that cracks of less than one millimetre are not considered to be defects in themselves. I accept that evidence but the issue is whether this cladding system has been constructed in a good and workmanlike manner as required by the statutory warranty.
53. Mr Lorich returned to the House on 14 April 2014 and removed a section of rendered foam cladding which was produced at the hearing. The area that he removed was over a large steel column and encompassed a join between two polystyrene panels. It is apparent from inspection that these two panels had been glued together with a “mastic” type product which he said was “randomly applied”. He said that the panels were “thinly jointed” with the mastic bonding in some areas and separating easily in others. Certainly on inspection, it did not appear that a great deal of adhesive had been used. The external render had cracked along the join between the two panels although, as previously stated, the crack was less than one millimetre.
54. In the area where this first sample of polystyrene foam had been applied, a supporting steel column projected beyond the face of the stud wall of the House. Rather than build out the polystyrene foam boards around this projection the carpenter who installed the panels had cut out sufficient of the thickness of one of the boards to go around the projecting element so as to provide a uniform level finish when viewed from the outside. The effect of this was to reduce the thickness of the polystyrene panel in that area from seventy five millimetres to thirty five or forty millimetres. Some adhesive had also been applied to the column in an attempt to fix the panel in place.
55. Mr Lorich criticised the finish on the rear wall of the House as being rough and uneven and most unworkmanlike. His main criticisms however were that the panels were not joined over a stud and the cladding as a whole was installed without any control joints which he said should have been provided at about six metre intervals to accommodate movement in the render. He said that this was required by all of the major foam cladding and render manufacturers. He acknowledged that polystyrene foam panels have a certain amount of give but he said that control joints are nonetheless necessary in order to isolate movement.
56. Mr Kosa said that the “Ezyclad” manual of 2007 stated that the builder, engineer or designer should be contacted for placement of expansion joints. He said that it then goes on to state that, as a guide only, vertical expansion joints should be located every 5-6 metres. He said however that at the time of construction there was “a total lack of trade literature and manuals relating to the installation of this alternate material”. He also said that construction occurred before the Ezyclad manual was produced.
57. Sarking was used on the wall framed area but did not extend into the floor joist area which Mr Lorich said was contrary to good building practice. His evidence did not state specifically that this was a defect in itself.

58. Mr Lorich's conclusion was that the foam board render system needs to be removed and re-constructed in order "to produce an acceptable and enduring finish".
59. Mr Kosa said that there was no evidence that the render was spalling or peeling away. That was true of most of the surface but Mr Lorich pointed out several places where it was delaminating, particularly around the windows.
60. Mr Kosa said that it was the Applicant's responsibility to maintain external surfaces by cleaning and repainting. I accept that is the case but the question is whether this render system was installed in a proper and workmanlike manner. The problems that have been identified with the method of construction have nothing to do with maintenance.
61. Mr Kosa said that the materials are only warranted for seven years. I do not think that is relevant. The external skin of a dwelling house is expected to last much longer than that and should be constructed in a proper and workmanlike manner.
62. On the evidence I must find that the polystyrene panels and rendering have not been applied and finished in a proper and workmanlike manner and so a breach of the statutory warranty is established. The amount assessed by Mr Lorich of \$53,534 will therefore be allowed.

Ground floor ceiling light and fan

63. The ceiling light and fan were not properly installed and wobbled. The Owner considered that to be dangerous and had an electrician fix it at a cost of \$150. I did not understand this item to be seriously in dispute and the amount of \$150 claimed will be allowed.

Electrical wiring

64. There were a number of defects identified with the wiring but the majority have not been shown to relate to work done for the Respondent.
65. Old wiring included the earth wire to the refrigerator on the ground floor which was not connected to the earth at the metre box and numerous cables under the House which were not properly secured. It was suggested that there was no proper earth pole installed but this was disputed and the electrician who installed a new earth pole for the Applicant was not called.
66. Criticism was made of the switchboard. It was said to be not properly labelled and the wiring to it appeared to be quite untidy in the photographs that I was shown. It was also said that more than one safety switch was required. I accept Mr Thorpe's evidence that he upgraded but did not replace the switchboard and that he changed the point of attachment to the House. He said that the untidy wiring in the switchboard and poor labelling was not his work. It appears that the solar panel installer has altered the switchboard since Mr Thorpe left.

67. The down lights on the ground floor were low voltage with transformers. I was shown a transformer that had overheated and required replacement. It was acknowledged that great care must be taken to protect these from insulation in the ceiling to avoid them overheating and it was apparent from the fact that this one had melted that that had not been done. Mr Blaney suggested that they should be replaced with LED lights which do not overheat but that would be a substantial upgrade rather than remedying a defect. I will allow to replace the melted transformer since that seems to have been poorly installed.
68. Some of the light fittings had the earth wires cut at the fitting. There was a difference of opinion between the experts about this and I do not know which view to accept. It does not appear that any of the fittings needed to be earthed. Mr Thorpe's practice is to cut them off whereas Mr Blaney said they should be connected together.
69. I will allow \$250 to replace the melted transformer and check the other down lights. The likelihood is that these will be replaced with LED lights which do not suffer from this overheating problem but this is new technology and should not be at the cost of the Respondent.

Laundry tiles

70. No wall tiles were fitted above the laundry trough and the laundry tiles on the floor were not grouted. Both of these things were evident at the time the House was purchased. According to Mr Kosa the Code does not require tiles above a laundry trough so long as the wall is waterproofed which he says can be achieved by two coats of the appropriate paint. There is no evidence as to how the wall was finished. The Applicant has since had it tiled at a modest cost. I am not satisfied as to this item. As for the floor, the tiles should have been grouted and in the absence of a separate costing of that I will allow \$150 for the cost of doing so.

Vanity

71. The vanity unit in the en suite had a top mounted basin with a mixer tap mounted at the rear. It was adhered to a mirror directly behind it. The water to the mixing tap came from outlets in the wall accessed through the cupboard. Flexible hoses then extended upwards within the cabinet and through the top and into the basin from underneath. The mixer tap failed and required replacement. The Applicant's plumber attempted to remove the basin but in doing so broke the basin, the top of the vanity and also the mirror behind the basin. He provided a letter to the effect that the basin had been sealed in with excessive quantities of sealant.
72. It was agreed between the experts that the normal method of fixing such a basin to a vanity is by siliconging around the edge. If the basin requires removal one simply has to cut the silicone. According to the Applicant the plumber demonstrated to him when he first attempted to remove the basis

that it was difficult to remove and he expected that the basin, the vanity, the mirror or all three of them would break.

73. Mr Williams said that the tap could have been accessed from underneath and there was no need to do what Applicant's plumber did. As against that evidence I have only the letter from the Applicant's plumber. Precisely how the basin, the cabinet top and the mirror all came to be broken is unclear. The Applicant was not present in the room when whatever the plumber did occurred. On this state of the evidence I am unable to find that the basin was not installed in a proper and workmanlike manner.

Ceiling

74. The ceiling to the balcony area has split between the sheets of plaster. Mr Lorich's opinion is that it has not been back-blocked. Ms Goodrem and Mr Vosti said that the plasterer who did the work was experienced and had done the rest of the plastering in the House. They pointed out that in the area in the study where Mr Lorich had removed the section of ceiling, he found that the ceiling at that location had been back-blocked and invited me to infer that if he had back-blocked there it is likely that he also back-blocked the ceiling elsewhere. They said it was most unlikely that he would back-block the other ceilings and not the ceilings in the balcony area. The plasterer was not called.
75. The Respondent also pointed out that the Applicant had installed two substantial windows in this area, converting what had been a semi open balcony into a fully enclosed balcony. They suggested that the work involved on this might have caused movement which in turn caused the plaster to crack. Mr Lorich said that in his opinion that was unlikely.
76. Looking at the extent of the work done in regard to the windows, it is simply two windows made to measure which have been inserted into openings constructed by the Respondent. The cracks between the sheets of plaster in the ceiling look uniform. The difference between these sheets of plaster and the ones inside the House were that, at the time the work was done, the ceilings in this area were external and the others were internal.
77. On Mr Lorich's evidence I find that the plaster above the barbecue area has not been back-blocked. He assessed \$2,257 as the cost of back-blocking and repainting but said that would assume that the roof is coming off. If it were not, he said that the cost of removing and replacing the roof in the affected area would need to be added. I accept Mr Kosa's evidence that rectification can be done from inside the House and so I do not need to add anything to account for the fact that the roof will not be coming off. I will therefore allow \$2,257 without any addition.

Windows not double glazed

78. Although the plans required double glazing of windows there was no requirement for the Respondent to follow the plans. All that was required

was that she comply with the statutory warranties. Nobrecah of the warranties is established in this regard.

Barbecue area window

79. The final item is the south window of the barbecue area which is not flashed. Mr Lorich said that this could be flashed and assessed a figure of \$1,663 which will be allowed.

Conclusion

80. The following items are established:
- (a) Steps \$6,682.50;
 - (b) Bedroom One roof \$950.00;
 - (c) Straighten out the sisalation \$150;
 - (d) additional rivets to the box gutters and enlarge outlets \$750;
 - (e) Replacement of cladding system \$53,534;
 - (f) Ceiling light and fan \$150;
 - (g) Replace the melted transformer and check the other down lights \$250;
 - (h) Laundry tiles \$150;
 - (i) Barbecue area ceiling \$2,257;
 - (j) Flashing of barbecue area window \$1,663.
81. These total \$66,536.50. There will be an order that the Respondent pay to the Applicant \$66,536.50. Costs will be reserved.

SENIOR MEMBER R. WALKER