

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
CIVIL DIVISION
BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. BP955/2015

CATCHWORDS

Domestic Building: Section 40 and 41 Domestic Building Contracts Act 1995; Breach of contract; termination by owner.

APPLICANT Mrs Afag Salmanzadeh
RESPONDENT Janville Homes Pty Ltd (A.C.N. 152 290 269)
WHERE HELD Melbourne
BEFORE Member J. Pennell
HEARING TYPE Hearing
DATE OF HEARING 26 & 27 May 2016
DATE OF ORDER 5 September 2016
CITATION Salmanzadeh v Janville Homes Pty Ltd (Building and Property) [2016] VCAT 1461

ORDERS

1. The respondent shall pay to the applicant the sum of \$128,089.51.
2. Costs reserved. I direct the Principal Registrar to list any application for costs before Member Pennell for 2 hours

MEMBER J. PENNELL

APPEARANCES:

For Applicant Mr R. Jurdi
For Respondent Mr Abdul Rahman Salma

REASONS

- 1 The applicant owner and the respondent builder entered into a Master Builders Association Building Contract dated 11 October 2014 for the construction of a double story dwelling and garage at the rear of the owner's property for the total sum of \$313,170.00 (inclusive of GST) ('the contract'). At all relevant time the respondent was a registered builder with the meaning of the *Domestic Building Contracts Act 1995*.
- 2 The method of payment for the building works was a series of progress payments in accordance with five separate stages: these being the base stage; frame stage; lock-up stage; fixing stage; and completion. These stages reflected those defined under the *Domestic Building Contracts Act 1995* (Vic) ('the Act').
- 3 The owner claims that the builder has breached the warranties contained in the contract pursuant to sections 8 of the *Domestic Building Contracts Act 1995* ('the DBC Act'). In particular she claims that the builder has failed:
 - (a) to complete the works by the completion date;¹
 - (b) to complete the building works in a proper workmanlike manner and in accordance with the plans and specifications of the contract.
 - (c) to supply materials for use in the building works that were good and suitable for the purposes for which they are to be used.
 - (d) to carry out the building works in accordance with all laws and legal requirements including the *Building Act 1993* and the regulations made under that Act.
 - (e) to carry out the works with reasonable care and skill;
- 4 In addition the owner claims that the builder demanded payment of money for the lock up stage of construction prior to its completion.

¹ Op Cit Clause 8.4

Progress Payments

- 5 The contract utilised the definitions of the five stages of construction, as well as the percentage payments of the contract price due for each respective stage of the construction of a home, as set out in s 40(1) of the Act. Under s 40(4) of the Act the parties are permitted to contract out of the sequence provided for under the Act and modify the standard stages. They chose not to do so here.
- 6 Section 3 of the Act defines ‘home’ relevantly to mean ‘any residential premises and includes any part of a commercial or industrial premises that is used as a residential premises’.
- 7 The definitions of the five stages of construction under s 40(1) are as follows:
- ‘base stage’ means –
- (a) in the case of a home with a timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level;
 - (b) in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed;
 - (c) in the case of a home with a suspended concrete slab floor, the stage when the concrete floorings are poured;
 - (d) in the case of a home with a concrete floor, the stage when the floor is completed;
 - (e) in the case of a home for which the exterior walls and roof are constructed before the floor is constructed, the stage when the concrete footings are poured;
- ‘frame stage’ means the stage when a home’s frame is completed and approved by a building surveyor;
- ‘lock-up stage’ means the stage when a home’s external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary);
- ‘fixing stage’ means the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position.
- 8 Section 40(2) of the Act prohibits a builder from demanding more than the percentage of the contract price prescribed respectively for the completion of each of the five stages. It reads, relevantly:

'A builder must not demand or recover or retain under a major domestic building contract of a type listed in column 1 of the Table more than the percentage of the contract price listed in column 2 at the completion of a stage referred to in column 3... '.

- 9 The 'Building Period' - the time for completion of the dwelling, was 102 days including an estimate of 32 days for total delay days due to inclement weather, weekends, public holidays, rostered days off and other foreseeable breaks in the continuity of the work.
- 10 The building permit was issued on 17 January 2014, and the anticipated commencement date of the building works was 24 January 2014. The parties agree that the completion date was 7 May 2014.
- 11 Clauses 10.3 of the contract required the builder to provide the owner with a written progress payment claim at the completion of each stage. In addition section 40(3) of the Act provides that a builder must not demand, recover or retain more than the percentage as prescribed in that section.
- 12 Clause 10.4 requires that each progress claim submitted by the builder shall show the sum paid or to be paid by the owner under the contract, the amount of all variations completed together with a schedule of such variations, the total sum of payment already made by the applicant to the respondent and the amount claimed by the builder taking into account all amounts paid by the owner.
- 13 Clause 15.1 of the contract provides that if the works are to be delayed by such matters including any variations, disputes, industrial action, inclement weather or unavailability of materials then the builder within a reasonable period of time is to advise the owner of the cause and time of the delay upon which the builder would be entitled to a reasonable extension of time for the completion works.
- 14 Clause 21 of the contract allows the owner to terminate the contract in accordance with section 41 of the Act if the contract price increases by more than 15% or more after the contract was entered into, or the works have not been completed within one and half times the period it was to be completed.

Demanding payment prior to completion of the fixing stage

- 15 On 15 March 2014 the builder issued an invoice to the owner upon completion of the base stage, which was paid by the owner.
- 16 On 28 March 2014 the builder made a progress claim for the frame stage for 15% of the contract price, being \$46,975.00, which was paid by the owner.

- 17 On 6 June 2014 Mr Arthur Panagiotopolous of Apana Pty Ltd inspected the frame stage works at the request of the relevant building surveyor. Following the inspection, Apana Pty Ltd issued a notice of defects that identified 34 defects that required rectification before the building inspector would approve the frame stage works.
- 18 Mr Salam is the sole director and shareholder of the builder. His evidence on behalf of the builder was that the defects listed in the notice were ‘minor in nature.’ In his view they did not warrant the stopping of the building works and said that they would be addressed during the course of the build.
- 19 On 30 October 2014 Mr Panagiotopolous attended the property again to inspect the works and noted that none of the defects identified in the June notice had been rectified. As a result he issued a further notice of defects dated 30 October 2014.
- 20 The contract was terminated by the owner in November 2014. Following the owners termination of the contract the owner engaged another builder, Wattle Glen Homes & Extensions to rectify the defects for the total cost of \$15,960.00. As a result on 18 December 2014 Mr Panagiotopolous issued a certificate of compliance.
- 21 In *Cardona & Anor v Brown & Anor* [2012] VSCA 174 (‘the *Cardona Case*’) Tate J² considered the issue of a demand for a progress payment for the lock up stage in circumstances where the frame stage had not been completed. In considering the issue of a progress claim certificate for the frame stage Her Honour said that:
- ‘the issuing of the progress claim certificate for the frame stage on 4 December 2006 was clearly premature, as the requirement under the definition of ‘frame stage’ for a home’s frame to have been approved by a building surveyor was not meet.’*
- 22 The builder made a claim for payment of the frame stage on 28 March 2014. The claim was premature and in breach of the contract in circumstances where it was made prior to approval of the works being obtained from the building surveyor and at a time in the construction of the dwelling when only limited works on the stage could have been performed.

Demanding payment prior to completion of the Lock up stage

- 23 The owner also contends that the builder issued a demand for payment of the lock up stage on 2 June 2014, prior to its completion.

² *Cardona & Anor v Brown & Anor* [2012] VSCA 174 per Tat J @ [73]

- 24 Ms Fiena Fang Wen of ATR Building Consultants prepared an expert report on behalf of the owner dated 16 January 2015.
- 25 Ms Wens gave evidence during the course of the hearing was that the lock up stage of the property had not been completed. She said that up to completion of the lock up stage the dwelling was to be secure and weather proofed. Her evidence was that the further works that were required to be performed for the lock up stage included the installation of 3 garage doors, an external door, soffit board/eave lining, all downpipes and flashings.
- 26 It was Ms Wen's evidence that the cost to complete these works would be \$12,939.00 and estimated that the cost of the rectification works not compliant with the dwellings design was \$3,258, a total of \$16,197.00.
- 27 Mr Salma agreed that those matters identified by Ms Wen had not been completed. Despite the items identified by Ms Wen being included in the builder's specifications dated 11 October 2013, it was his position that they were not necessary for the purposes of completing the lock up stage.
- 28 In *Cardona Tate J* considered whether the garage formed part of the home for the purposes of determining the completion of the lock up stage. Her Honour placed importance on the terms of the contract, and in particular what the owner and builder were contracting for. Her Honour found that in circumstances where the contract for the construction of the dwelling included a garage that the garage would form part of the construction works for each payment stage under the terms of the contract.³
- 29 The items referred to by Ms Wen formed part of the scope of works⁴ that were to be performed by the builder. At the time the owner terminated the contract the lock up stage had not been completed by the builder. In such circumstances the claim for payment of the lock up stage was premature and in breach of the contract.

The builder's entitlement to make a claim for a progress payment

- 30 The builder's entitlement to make a claim for a progress payment under the Act, and the contract, is dependent upon upon a consecutive and incremental completion of each stage of construction.⁵ It is the consecutive and incremental completion of the construction of the dwelling that triggers the respondent's entitlement to payment of each stage.

³ *Cardona & Anor v Brown & Anor per Tate J* @ [77]- [79]

⁴ Janville Homes Specifications 61 Maggs St Doncaster dated 11 October 2013

⁵ Op Cit @ [68]

- 31 Clause 10.4 of the contract requires that a builder give an owner a written claim for each progress payment when each stage has been completed, together with the amount paid or to be paid for the stage or stages completed. Therefore, the stages to be completed by the builder before a demand can be made for a progress payment must be in accordance with those set out in the Appendix to the contract. When making a demand for payment of a stage the builder was required to identify its earlier demands for all completed stages.⁶
- 32 A written claim for a progress payment must also specify ‘the total claimed, taking into account the payments already made.’⁷ This suggests that each progress payment claim does not stand in isolation but is intended to take account of, in a cumulative fashion, the claims and payments already made. Therefore, while the particular percentage entitlements of the contract price prescribed in the Table under s 40(2) of the Act are not cumulative, a progress payment claim must specify, in a cumulative way, the total amount demanded of the owner including the previous payments already made. This is indicative of a regime that reflects the fact that the works are to be performed consecutively through the stages in the construction of the dwelling.
- 33 In this case the builder has prematurely made a claim for both the ‘frame stage’ and the ‘lock up’ stage in circumstances where the claim for payment in relation to each stage has been made before completion of the works.

Builder’s delay

- 34 Section 41 of the Act provides:

‘A building owner may end a major domestic building contract if—

(a) either—

(i) the contract price rises by 15% or more after the contract was entered into; or

(ii) the contract has not been completed within 1½ times the period it was to have been completed by; and

(b) the reason for the increased time or cost was something that could not have been reasonably foreseen by the builder on the date the contract was made....’

- 35 The ‘Building Period’ - the time for completion of the dwelling, was 102 days including an estimate of 32 days for total delay days due inclement weather, weekends, public holidays, rostered days off and other foreseeable breaks in the continuity of the work.

⁶ Op Cit @[69]

⁷ Contract; clause 10.4 E

- 36 The building permit was issued on 17 January 2014, and the anticipated commencement date⁸ of the building works was 24 January 2014. The applicant therefore contends that the works should have been completed on or about 7 May 2014.
- 37 It was agreed between the parties that the building works were not completed by the completion date.
- 38 Mr Salma's position was that the completion date was extended to 25 November 2014 by reason of variations agreed between the builder and the owner. The variations provided by the builder and signed by the owner allowed for a total of 58 days extension to the completion date of the building works. They were:
- (a) 20 July 2014 - variation to kitchen joinery as quoted by D.O. Creative Cabinets at a cost of \$3,000.00 and delay of 14 days;
 - (b) 20 July 2014 - variation to heating and cooling system at an increased cost of \$4,120.00 and delay of 14 days;
 - (c) 2 August 2014 – variation to heating and cooling system resulting in delay of 30 days.
- 39 In addition Mr Slama said that the owner was late in returning her selection form in relation to plumbing fixtures and tiles dated 30 May 2014 and 2 August 2014 respectively. He says that this resulted in further delay to the building works. However, he admits that the builder did not seek to suspend the works pursuant to clause 16.1 of the contract in relation to these items.
- 40 The variations dated 20 July 2014 and 2 August 2014 relate to the same heating and cooling system. Mr Salma says that the variations were made due to the owner's change of mind in relation to the heating and cooling system she wanted installed. Given that the builder was not in a position to install any heating system at the time both variation claims were served on the owner, that is prior to the completion of both the framing and lock up stages, the first notice in relation to the heating and cooling system is superfluous upon the second notice being served. In fact, the additional time allowed in the notice dated 1 August 2014 appears to allow for the variation granted in the previous notice. For these reason I find that the completion date is extended by 34 days to 10 June 2014.
- 41 In any event at the time the builder made the progress claim for the 'lock up' stage on 2 July 2014, no variation for an extension of time had been issued by the builder (in relation to the base or framing stage) causing delay. As a result, the variations identified by the builder did not caused any delay in the works.

⁸ Master Builders Contract dated 11 October 2013 Appendix Item 9.1

42 If the delays identified by the builder are accepted then under the terms of the contract the works were required to be completed by 8 July 2014. Therefore, even accepting the delays as identified, the builder has failed to complete the works by the completion date, and in accordance with the accordance with all laws and legal requirements.

Owner's Termination of the Contract

43 Clause 20.1 of the contract states:

'If the builder:

- *fails to proceed with the works with due diligence or in a competent manner; or*
- *refuses or persistently neglects to comply with this contract;*
- *is unable or unwilling to complete the works or abandons the contract; or*
- *is in substantial breach of this contract.*

Then

The owner may give written notice by registered post to the Builder:

- *describing the breach or breaches of the contract by the Builder; and*
- *stating the owner's intention to terminate the contract unless the Builder remedies the breach or breaches of this contract within a period of fourteen days after the Builders receipt of this notice.'*

44 By a notice dated 3 November 2014 the owner gave the builder notice in accordance with clause 20.1 of the contract, which identified the builder's breach of the contract and advised of the owner's intention to terminate the contract unless the builder remedied the breaches identified within 14 days.

45 Mr Salma says that he and his tradesmen attended the site on 3 November 2014 to rectify the defects but were ordered to leave by the owner. As a result, he left the site and did not return despite being willing and able to return to complete the works. Notwithstanding, the builder's willingness to return to complete the works no attempt was

made to return to the site to rectify the defects in accordance with the notice.

- 46 Accordingly, pursuant to clause 20.2 of the contract, on 20 November 2014 the owner gave the builder notice that the contract had been terminated due to its failure to rectify the defaults as detailed in the notice dated 3 November 2014.
- 47 At the time of the contract being terminated the unpaid balance of the contract price was \$109,609.30, being the total amount allowed for the fixing stage (\$78,292.30) and the final payment on completion (\$31,317.00).
- 48 The builder denies that it is liable to the owner for the amount claimed by reason of the fact that he remained willing and able to complete the works. In particular, it says that the owner was not entitled to terminate the contract under section 41 of the *Domestic Building Contract Act 1995* until 25 November 2014. This is not correct.
- 49 Pursuant to section 41 of the *Domestic Building Contracts Act 1995* the works were to be completed within 153 days from the commencement date. That is 1.5 times the construction period of 102 days. On any view the works were not completed at the time of the owner serving the notice dated 3 November 2014 on the builder. Given the builder failure to rectify the works with 14 days, the owner was entitled to serve the notice of termination on the builder dated 20 November 2014.

Damages

- 50 The owner in her Amended Points of Claim dated 12 November 2015 claims damages in the amount of \$184,368.70 by reason of the respondent's failure to complete the building works in accordance with its statutory and contractual obligations.
- 51 Clause 18.1 of the contract provides that if the builder fails to bring the works to completion by the completion date, it will pay the owner liquidated damages in the amount of \$250.00 per week.
- 52 Clause 20.4 of the contract provides that if the owner terminates the contract in accordance with the clause 20, she may recover the reasonable costs to complete the building works exceeding the unpaid balance of the contract price and that such excess amount shall be a debt due and payable by the builder.

- 53 In or about October 2014 the owner authorised her son Mr Assadian to administer the construction of the building works on her behalf. After terminating the contract with the builder Mr Assadian engaged Wattle Glen Homes and Extensions to complete the works identified in the notice of defect⁹ for the purposes of obtaining a certificate of compliance. The total cost of the works was \$15,960.00¹⁰
- 54 On 11 February 2015 Mr Assidain on behalf of the owner engaged the services of Ogin Yako of DeBaz Builder Pty Ltd ('DeBaz') to complete the building works at a cost of \$146,000.00.
- 55 However, the DeBaz specifications identified material and appliances that the owner was to supply that were originally to be supplied by the builder. These items included tiling, kitchen cabinetry and appliances, heating and cooling system and plumbing fixtures.
- 56 In addition, Mr Assidain said that he had engaged trades prior to securing the services of DeBaz to complete the works and for supplying the materials and appliances as agreed with DeBaz.
- 57 As to the works arranged prior to DeBaz's engagement the owner gave evidence that all the accounts had been paid. They were as follows:
- (a) 12-cubic metre skip bin used to remove rubbish left behind at the building site at a cost of \$750.00.¹¹ This is an item that should have been paid by the builder and therefore I will allow this item.
 - (b) Installation of storm water plumbing (including tip fees and crushed rock and aluminium grated cover) totalling \$16,997.61.¹² This is an item that was included in the builder's specifications and should be included.
 - (c) Works relating to the installation of electrical mains. Custom Electrical Contractors performed the works at a cost of \$2,860.00.¹³ These are works that would have been required to be performed by the builder. Accordingly I will allow the amount of \$2,860.00
 - (d) Rectification of frame defects. The invoice dated 15 December 2014 from Wattle Glen Homes and Extension for rectification

⁹ Exhibit A-9

¹⁰ Exhibit A-21

¹¹ Exhibit A 21

¹² Ibid

¹³ Ibid

of the defects identified in the APA report in the frame stage totalled \$15,960.00.¹⁴

- (e) Supply of kitchen appliances from Harvey Norman totalling \$3,400.00. The builder had made an allowance of \$3,700.00 for kitchen appliances and as a result this item should be allowed.
- (f) Supply of tap and mixer. Harvey Norman supplied these items at a cost of \$1,050.00.¹⁵ These items were included in the builder's specification and should be allowed.
- (g) Plumbing rough in works. MBM Plumbing performed the rough in works at a cost of \$3,410.00.¹⁶ This item was included in the builder's scope of works and is therefore allowed.
- (h) Electrical metre box (invoices were supplied for labour, supply of bricks and concrete and expansion joints) totalling \$1,174.90.¹⁷ This is an item that the builder was required to perform and as such I will allow the amount of \$1,174.90.

58 As to costs paid by the owner after engaging DeBaz to complete the works, these relate to costs incurred by the owner for materials and work included in the contract but not included in the DeBaz contract. The costs claimed by the owner are:

- (a) New permit costs. Generally, the new builder would be responsible for the cost of all permits. Therefore the cost of obtaining the amended permit is one that ought to have been met by the new builder.
- (b) A six cubic meter skip at a cost of \$495.00.¹⁸ This is an item that would normally be covered by builder and therefore is not allowed.
- (c) Electrical work to move the existing house electrical metres to a group metre performed by Custom Electrical for the total cost of \$979.00.¹⁹ This work relates to the existing dwelling and as such is not included in the builder's specifications. However, it appears to be work that was to be completed by the new builder and as such I do not make any allowance for this amount

¹⁴ Exhibit A21

¹⁵ Exhibit A21

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Exhibit A22

¹⁹ Exhibit A22

- (d) Supply and installation of a heating and cooling system totalling \$8,245.00. The installation of the heating and cooling system was performed by HRC Electrical at a cost of \$2,960.00 with the equipment being supplied by Harvey Norman at a total cost of \$5,285.00. The builder had allowed \$5,400.00 and I therefore allow \$5,400.00.
- (e) Bathroom and kitchen tiles were purchased by the owner from Western Distributors for the total cost of \$2,104.00. These were originally to be supplied by the builder. An allowance for the builder standard range has been allowed. The owner purchased the tiles due to the fact that they were not included in DeBaz specifications. I therefore allow a reasonable amount being \$1,050.00.
- (f) D.O. Creative supplied the owner with cabinets and joinery at a total cost of \$10,689.00 in accordance with the variation dated 20 July 2014.²⁰ The builder had allowed the amount of \$7,689.00 for kitchen cabinets in its specifications. I therefore allow the amount of \$7,689.00.
- (g) Purchase of garage roller doors from Garage Door Solutions for \$2,500.00. These were to be supplied by the builder. I therefore allow \$2,500.00.
- (h) Fit off of all electrical works in the garage performed by Local Pro Electrical in the sum of \$528.00. However, this is an item that is included in the DeBaz specifications²¹ and therefore not allowed.
- (i) Plumbing fixtures and fitting purchased for a total cost of \$7,229.00. Tax invoices for the items purchased were provided at the hearing totalling \$7,229.00.²² These items were included in the builder's specifications at the builder's standard range. Therefore, I will allow a reasonable amount for this item being \$3,500.00.
- (j) Bathroom shower screens supplied by Speedy Showers Screens for the total amount of \$1,600.00.²³ This item was also included in the builder's specification. I find this amount reasonable and therefore allow this amount.

²⁰ Exhibit R2

²¹ Exhibit A 23

²² Exhibit A22

²³ Ibid

- (k) Installation of bathroom mirrors and kitchen splashbacks. The kitchen splashbacks are included in the builder's specifications²⁴ but the bathroom mirrors are not listed in the builder's specifications. The invoice from Instyle Glass Innovations totals \$2,805.00.²⁵ The amount the owner was charged for Kitchen toughened glass splashback is listed as \$1,450.00. I will therefore allow this amount \$1,450.00.
- (l) Purchase and installation of carpet from Western Distributors for the total amount of 2,800.00.²⁶ This item was included in the builder's specifications²⁷ and therefore I will allow this amount.
- (m) Bollards for outdoor gas unit purchased at a cost of \$300.00.²⁸ This is not include in the builders specification and therefore is not allowed.

58. In all the circumstances the owner is entitled to recover from the builder the following.

- (a) Pursuant to the terms of the contract liquidated damages for a period of 23 weeks from 10 June 2014 to 20 November 2014, being the date upon which the building works would have been completed taking into account the variation for 34 days. The amount allowed under the contract is \$250.00 per week. This amount is reasonable and taking into account the value of the property. Therefore the amount allowed is \$250 per week x 23 weeks = \$5,750.00.
- (b) All reasonable costs incurred prior to the DeBaz contract as follows:

| Item | Amount allowed |
|-------------------------|----------------|
| 12-cubic metre bin hire | \$795.00 |

²⁴ Exhibit A24

²⁵ Exhibit A22

²⁶ Ibid

²⁷ Exhibit A24

²⁸ Ibid

| | |
|--------------------------------------|--------------------|
| Installation of storm water plumbing | \$16,997.61 |
| Installation of electrical mains | \$2,860.00 |
| Purchase of kitchen appliances | \$3,400.00 |
| Purchase of tap and mixer | \$1,050.00 |
| Plumbing Rough in works | \$3,410.00 |
| Installation of electrical mains | \$2,860.00 |
| Electrical metre box | \$1,174.90 |
| Total | \$31,752.51 |

- (d) All reasonable costs for items undertaken by the owner during the DeBaz contract are as follows:

| Item | Amount allowed |
|--|----------------|
| Supply and installation of heating and cooling | \$5,400.00 |
| Purchase of tiles | \$1,050.00 |

| | |
|---------------------------------------|--------------------|
| Supply and install joinery cabinets | \$7,689.00 |
| Plumbing fixtures and fitting | \$3,500.00 |
| Supply and install shower screens | \$1,600.00 |
| Supply and install kitchen splashback | \$1,450.00 |
| Supply and install carpets | \$2,800.00 |
| Total | \$22,039.00 |

(e) Other heads of damage allowed.

| Item | Amount allowed |
|--|----------------|
| Costs incurred to rectify frame defects | \$15,960.00. |
| Reimbursement of lock up stage monies | \$16,197.00 |
| Difference between DeBaz contract (\$146,000.00) balance of contract with the builder (\$109,609.30) | \$36,391.00 |

| | |
|--------------|--------------------|
| Total | \$68,548.00 |
|--------------|--------------------|

59. I therefore order that the builder pay to the owner the amount of \$128,089.51.

Orders

60. The builder shall pay to the owner the sum of \$128,089.51.

61. Costs reserved. I direct the Principal Registrar to list any application for costs before Member Pennell for 2 hours.

MEMBER J. PENNELL