

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D386/2010

**CATCHWORDS**

Sufficiency of evidence – conflicting evidence - tiling works.

<b>APPLICANT</b>	Valda Salton
<b>RESPONDENT</b>	Valentin Gavriiuc t/as Euro Tile - Tiling
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member E. Riegler
<b>HEARING TYPE</b>	Small Claim Hearing
<b>DATE OF HEARING</b>	22 July 2010
<b>DATE OF ORDER</b>	27 July 2010
<b>CITATION</b>	Salton v Gavriiuc trading as Euro Tile - Tiling (Domestic Building) [2010] VCAT 1223

**ORDER**

1. The Respondent must pay the Applicant \$2,944.

**SENIOR MEMBER E. RIEGLER**

**APPEARANCES:**

For the Applicant	Mrs Valda Salton (in person).
For the Respondent	Mr Alexander Gavriiuc & Mr Valentin Gavriiuc (in person).

## REASONS

- 1 This proceeding comprises a claim made by Mrs Salton against Valentin Gavriiliuc, trading as Euro-Tile Tiling Company, in relation to floor tiling works that Mrs Salton says he undertook. In defence of the claim, Mr Gavriiliuc says that he did not carry out the tiling works.

### **The Applicant's position.**

- 2 Mrs Salton is the owner of a home in Brighton, which she purchased in August 2009. In early February 2010, she visited Mingarelli Tiles, a supplier of tiles, to look at floor tiles to replace the existing floor tiles and some carpeted areas of her home. She asked Mr Mingarelli whether he could recommend a tiler to undertake the proposed works. Mr Mingarelli recommended a firm known as *Alexander Tiling*<sup>1</sup> and gave her the contact details of that entity. On 9 February 2009, Mrs Salton rang and spoke with Alexander Gavriiliuc regarding the proposed tiling works.
- 3 Alexander Gavriiliuc and his father, Valentin Gavriiliuc, visited Mrs Salton on that same day to discuss and inspect the proposed tiling works. According to Mrs Salton, the works comprised taking up all existing tiles and some carpet and replacing those areas with new porcelain tiles that she was to purchase from Mingarelli Tiles. The new tiling work covered an area of approximately 50 m<sup>2</sup>.
- 4 Mrs Salton said that Alexander Gavriiliuc discussed the project with her. She said that Alexander Gavriiliuc suggested that Euro-Tile Tiling Company could organise to supply the porcelain tiles from Mingarelli Tiles, through its account with that firm. According to Mrs Salton, Valentin Gavriiliuc gave her two written quotations each dated 9 February 2010 relating to the proposed work. Mrs Salton produced those quotations to the Tribunal. The first quotation, for \$1,187, related to the supply of 51 m<sup>2</sup> of tiles. The second quotation, for \$3,265, related to uplifting the existing tiles and laying the new tiles. I note that Alexander Gavriiliuc disputed the authenticity of both those documents. He gave evidence that he did not write those quotations and that they were not quotations made on behalf of Euro-Tile Tiling Company.
- 5 Mrs Salton said that she accepted the quotations and handed a cheque to Alexander Gavriiliuc for \$1,187 to enable Euro-Tile Tiling Company to purchase the tiles, together with \$980.10 in cash, which represented a deposit of 10% of the agreed contract sum. She said that 50 m<sup>2</sup> of 400 x 400 porcelain tiles supplied by Mingarelli Tiles were delivered to her home on 11 February 2009 and the tiling works commenced on 17 February 2009.
- 6 She gave evidence that on 17 February 2009, all the existing tiles were uplifting and over the following four days, Alexander Gavriiliuc and his

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<sup>1</sup> Alexander Gavriiliuc gave evidence that Euro-Tiles Tiling Company had previously traded under the name *Alexander Tiling*.

father laid the new porcelain tiles. She said that Alexander Gavriiliuc would cut the tiles and his father would lay the tiles.

- 7 Mrs Salton gave evidence that further cash payments were made to Alexander Gavriiliuc at his request, making the total payments relating to labour and sundries as follows:

<b>Date</b>	<b>Percentage of contract price</b>	<b>Amount</b>
17 February 2010	30%	\$980.10
18 February 2010	30%	\$980.10
19 February 2010	30%	\$980.10
20 February 2010	10%	\$324.70
<b>Total</b>	<b>100%</b>	<b>\$3,265</b>

- 8 Mrs Salton claims that the tiling work was not completed in a professional and workmanlike manner. She relies on a report prepared by *All Tiles* dated 17 March 2010, which states:

After doing an inspection for the above client, we found the following faults that need to be rectified in order for the job to be sufficient:

- Grouting between joints are irregular with grout either being too shallow, missing or just not applied properly.
- Paint sealer has been used in between architraves/skirtings which is not sufficient – caulking to be professionally done to take up the gaps between the tiles and substrates.
- Approximately 15 tiles need replacing as the cuts are not tight enough and the tiles finish well short of doorways. Tilers should know that the intersection between the tiles and carpet should meet halfway under the doors when closed.
- In entrance, the carpet has been cut too short for the carpet layer to tuck and stretch his carpet to trim supplied.
- General appearance of tiles is not clean and they have been stained in certain areas of the floor.
- Grout is missing up against the tile trim where slide doors are.

- 9 The report suggested two options in order to rectify the defective works. The first option suggested uplifting all tiles and reinstating all of the work at a cost of \$8,140. The second option recommended the following work:

- Scratch out existing grout and re-grout total floor area.
- Replace 15 tiles in all areas needed and replace with new tiles in order for tiles to finish correctly under existing doors.
- Caulk around edges of floor where tiles met up with skirting (timber).
- Clean tiles after re-grouting to prepare for sealing as tiles are not pre-sealed.
- Replace any chips or irregular tiles.

- 10 The cost of undertaking the work set out under Option 2 was estimated to be \$2,500.
- 11 Mrs Salton subsequently contacted two other tiling contractors in order to obtain quotations to rectify the defective tiling work. She said that neither of those tiling contractors were prepared to undertake rectification work. Eventually, the Mrs Salton contacted *All Tiles* to prepare a report and ultimately undertake the rectification work comprised in Option 2 referred to above. Consequently, Mrs Salton has incurred the following expenses:
  - a \$2,500 in respect of labour to carry out the work described under Option 2.
  - b \$204 for 15 replacement tiles.
  - c \$240 paid to a cleaner to clean the tiles.
- 12 Mrs Salton said that she has not yet had the carpet repaired. She produced a quotation from Colstan Carpet Court for \$2,317 to replace the carpet. That quotation said nothing as to the condition of the existing carpet. It is simply a quotation to replace a quantity of carpet. Further, there is no evidence from anyone qualified to give an opinion as to damage caused to the existing carpet or whether that carpet could be repaired.
- 13 Mrs Salton gave evidence that she complained to Alexander Gavriliuc on Tuesday 23 February 2010 about the quality of work she says Euro-Tile Tiling Company undertook. She said that Alexander Gavriliuc had told her that he was not responsible for rectifying that work.

### **The Respondent's defence**

- 14 Alexander Gavriliuc gave evidence on behalf of his father. He confirmed that he and his father operated a business by the name of Euro-Tile Tiling Company. He also confirmed that Mrs Salton contacted him and that Euro-Tile Tiling Company had organised for the supply of 51 m<sup>2</sup> of porcelain tiles delivered to Mrs Salton. He further confirmed that Euro-Tile Tiling Company had been engaged to uplift the existing tiles. However, that was the extent of any consistency between his evidence and the evidence of Mrs Salton.
- 15 Alexander Gavriliuc said that neither he, his father or anyone engaged by Euro-Tile Tiling Company laid the new tiles or cut the existing carpet. He said that the scope of the work undertaken by Euro-Tile Tiling Company was described in two invoices both dated 19 February 2010, which he produced to the Tribunal.<sup>2</sup> That work comprised removal of the existing floor tiles from the kitchen area and removal of the screed underlay. The total cost of that work was \$3,265.

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<sup>2</sup> The two invoices produced by Alexander Gavriliuc were not the same documents produced by Mrs Salton bearing the same date.

- 16 Alexander Gavriiliuc did not dispute that the tiling work was defective. His defence of the claim made against Euro-Tile Tiling Company was that it had nothing to do with that tiling work because it was not work undertaken by it.

### **Did Euro-Tile Tiling Company lay the tiles?**

- 17 There is a clear divergence as to each party's account of the facts surrounding this dispute. Mrs Salton contends that Alexander Gavriiliuc and his father did the tiling work. Alexander Gavriiliuc says that someone else did that work.
- 18 Alexander Gavriiliuc contended that the period of five days over which Euro-Tile Tiling Company was on site was insufficient time to uplift all of the tiles and lay the new tiles. He submitted that the two invoices each dated 19 February 2010 were consistent with his evidence because the work described in those invoices did not mention laying the tiles.
- 19 By contrast, the Mrs Salton gave evidence that she never saw those two invoices before. She said that the two quotations provided to her on 19 February 2010 supported her evidence.
- 20 It seems to me that there are some inconsistencies in the evidence given by Alexander Gavriiliuc. First, Alexander Gavriiliuc conceded that he received a letter of complaint from the Mrs Salton dated 16 April 2010 sometime around that date. That letter alleged defective tiling work and attached the report prepared by *All Tiling*. He said that he did not respond to that letter of complaint. It seems odd to me that a party would not respond to a letter of complaint in relation to work, which it did not do. Alexander Gavriiliuc gave evidence that after receipt of that letter of complaint, he contacted the Master Builders Association of Victoria and asked for advice. He said that the advice given to him from the Master Builders Association of Victoria was that he should do nothing and simply defend the VCAT proceedings.
- 21 It does not seem plausible that a professional body such as the Master Builders Association Victoria would advise its members to do nothing where allegations of defective building work are raised against one of its members in circumstances where that person did not do the work, the subject of the complaint. Further, Mrs Salton filed her application in the Tribunal on 18 May 2010, some weeks after Alexander Gavriiliuc received her letter of complaint. I find it difficult to accept that the Master Builders Association Victoria would advise a member to do nothing but defend proceedings in VCAT, especially in circumstances where proceedings had not yet been issued.
- 22 It also seems somewhat peculiar that a person would issue proceedings against a party who did not do the work, unless of course that person was acting vexatiously. There is no evidence of Mrs Salton having acted vexatiously. Similarly, there is no evidence of any other person having

undertaken the tiling works, save and except for the rectification work undertaken by *All Tiles*.

- 23 Finally, Alexander Gavriiliuc gave evidence that the additional charge for removing the screed arose only after the existing tiles had been uplifted. According to Alexander Gavriiliuc, he was unaware of that work at the time that he provided Mrs Salton with his quotation, prior to the works commencing. That being the case, it is peculiar that the invoice dated 19 February 2010 for \$1,765 relates to removal of screed, especially in circumstances where Alexander Gavriiliuc disputed that all of the tiles were removed on the first day.
- 24 On balance, therefore, I find that it is more likely than not that Euro-Tile Tiling Company undertook the tiling works. That being the case, I find that Euro-Tile Tiling Company did not undertake those works in a professional and workmanlike manner. I further find that it was an implied term of the contract between the parties that the tiling works would be carried out in a proper and workmanlike manner. That being the case, I find that Euro-Tile Tiling Company breached its contractual obligations to Mrs Salton.
- 25 There being no other evidence before me as to the reasonable cost of rectification, I accept that the reasonable cost to repair the defective tiling works is \$2,944, being the actual expenditure incurred by Mrs Salton.
- 26 As to the claim relating to the damaged carpet, there is no evidence before me that the carpet cannot be repaired, save and accept for the evidence of Mrs Salton and what may be gleaned from the *All Tiles* report. There is no evidence, however, from a carpet layer or other person qualified to give evidence in relation to the carpet. Moreover, the quotation from Colstan Carpet Court produced by Mrs Salton does not indicate that the replacement carpet is the same or similar to the existing carpet said to be damaged. Accordingly, I am not satisfied that on the balance of probabilities, the carpet is so damaged that it would require replacement. I am also not satisfied that the cost of replacing the existing carpet is, in any event, fair and reasonable because there is no evidence before me that the replacement carpet is the same as the original carpet. For those reasons, I dismiss that aspect of Mrs Salton's claim.
- 27 I will therefore order that the respondent pay the applicant \$2,944, representing the cost to rectify defective tiling works.

**SENIOR MEMBER E. RIEGLER**