

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D71/2009

CATCHWORDS

Domestic Building work – damages for defective work

FIRST APPLICANT	Stephen Skec
SECOND APPLICANT	Michelle Skec
RESPONDENT	Henley Arch P/L (ACN 007 316 930)
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	17 April 2009
DATE OF ORDER	7 May 2009
CITATION	Skec v Henley Arch Pty Ltd (Domestic Building) [2009] VCAT 834

ORDER

Order the Respondent pay the Applicants \$4,109.00.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicants	Mr S. Skec and Ms M. Skec in person
For the Respondent	Mr A. Clark and Mr D. Savage in person

REASONS

Background

- 1 This proceeding concerns a dwelling house built for the Applicants, Mr and Mrs Skec (“the Owners”) by the Respondent, Henley Arch Pty Ltd (“the Builder”) in 2002. The Owners moved into the house in May that year.
- 2 The house has double front doors. As with most such door sets, one door is designed to close on the other, which is normally fixed in the closed position by a down bolt. Since shortly after moving in the Owners have been complaining about these doors and also about a crack in the fascia above the front door portico.

The doors

- 3 At the maintenance inspection conducted about 12 months after they took possession it was conceded that the doors were loose and had to be held into the jamb in order to close. The hinges were tightened and the striker plate adjusted. Since then the doors have been taken down and rehung on a number of occasions but they are still incapable of being closed without force. A weather strip has also been fitted by the Builder to prevent the ingress of the water. This necessitated the cutting down of the doors. It has not been successful and the Owners complain that it is a safety hazard.

The portico

- 4 The second problem relates to the fascia above the front door. It is bulging and cracks have appeared in the middle where it has separated from the render. This was filled by the Builder 12 months after the Owners moved in but the crack has reappeared. The bulge in the centre is approximately 10mm and the crack below it is substantial and unsightly.

Attempts at rectification

- 5 The Builder has returned on a number of occasions in response to the Owners’ complaints but the problems remain. On 15 November 2007 its maintenance manager Mr Savage agreed to fix the items but he said that, when questioned by the Owners as to how that was to be achieved, he felt threatened and left the premises. A letter was later written offering to do a limited scope of work but the Owners would not sign the letter and there was an impasse between the parties.
- 6 The house was inspected on behalf of Vero Insurance Limited in January 2009. The inspector, Mr Rosenbes, agreed that the faults were there but suggested that the entry door margins were within tolerance and there was nothing to suggest that the hinges were defective when installed. As to the entry door arch he said that although there was a crack, there was no evidence to suggest poor workmanship or negligence by the Builder. Finally, although acknowledging that the weather strip installed to the bottom the door projects to a sharp point into the area where one walks

when one enters the door that is usually open, he suggested that it was not in breach of the Building Code of Australia.

- 7 Although arguing that the items in question are not the result of defective labour or materials, the Builder has made an open offer to pay the Owners \$1,600.00 with respect to the front entry arch and \$400.00 for repairs to the doors. This offer has not been accepted.

The hearing

- 8 The matter came before me for hearing as a small claim on 17 April 2009. After hearing from the parties I visited the site. Contrary to what Mr Rosenbes says there is a clear bow to the fascia above the portico. It is also not “light weight” material as he says, but solid timber. It seems clear that he did not adequately inspect the fascia or he would not have arrived at the conclusion that he expresses.
- 9 As to the door, although I accept the evidence of the Builder’s witnesses, Mr Clark and Mr Savage, that the hinges came with the doors, it is clear to me that they have failed to support the doors adequately in that the doors have been allowed to fall inwards, being pulled by their own weight. It is therefore self evident that the hinges are inadequate and I do not agree with Mr Rosenbes that there is no evidence of defective workmanship or materials or that the margins are “within tolerance”. The doors are coming away from the jamb.
- 10 The door jamb is made of meranti, a soft timber used for framing doors and windows. The screws and the hinges are now loose, having been taken out and replaced on a number of occasions. The doors themselves have been cut down in order to fit the weather strip which has not worked. The projecting point of the weather strip is dangerous and must be removed. It seems to me clear that the whole door and frame will require replacement.

Cost of rectification

- 11 The Owners have obtained a number of quotations to replace the doors which range from \$2,629.00 to \$4,580.00. They have also produced a quotation to repair the front portico arch for \$1,480.00. The more expensive quotations for the replacement of the doors involve doors quite different from those presently installed and the provision of new door furniture which, I think, should not be necessary. I agree with Mr Clark that this would amount to betterment rather than rectification. Even the cheapest quote from “Doors a-Plenty” includes the purchase of new door furniture. Unfortunately, since the quote is not itemised, I do not know what allowance has been made for that.
- 12 However I note that the “Doors a-Plenty” quotation does not include painting. Painting a front door which is a main feature of a house is something that would need to be done professionally and it seems likely that a supplier would paint the doors before installing them.

- 13 I think the cost of painting should be taken up by the savings gained through re-using the door furniture. The quote to fix the front portico arch, \$1,480.00, is from JM Quality Homes which also quoted \$4,580.00 to replace the doors, albeit with a different system.
- 14 I will allow the total of the Doors a-Plenty quote namely, \$2,629.00, plus \$1,480.00 for the repair of the front portico arch. There will therefore be an order that the Builder pay the Owners \$4,109.00.

SENIOR MEMBER R. WALKER