

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## CIVIL DIVISION

### BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. D619/2014

#### CATCHWORDS

Domestic building – defects – standard of work required – whether defects noticeable – *Guide to Standards and Tolerances 1997*

<b>FIRST APPLICANT</b>	Mr Hasan Tahn
<b>SECOND APPLICANT</b>	Mrs Nicole Gualtieria
<b>RESPONDENT</b>	Enterprise Constructions (aust) Pty Ltd (ACN 067 058 896)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member R. Walker
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	21 January and 1 April 2015
<b>DATE OF ORDER</b>	8 April 2015
<b>CITATION</b>	Tahn v Enterprise Constructions (aust) Pty Ltd (Building and Property) [2015] VCAT 407

#### ORDER

- 1 The Respondent shall carry out the following scope of works at the subject property by 8 June 2015:
  - (a) Remove, strip, repaint and re-fit the doors to the Master Bedroom walk-in robe, both doors to the entry to the master bedroom and the ensuite, the two doors to the walk-in linen cupboard, the doors to Bedroom Four and the ensuite to Bedroom Four, Bedrooms Two and Three, the walk-in robe and ensuite to Bedroom Two, the ensuite to Bedroom Three, the doors and walk-in robe to Bedroom Five and the Laundry.
  - (b) Replace the passive door to the Master Bedroom to match the existing;
  - (c) Supply and install compatible striker plates to each of the double doors referred to in the attached reasons.

- (d) Sand back the architrave at the rear garage door and adequately fix it to the door frame, repair any gaps between the door frame and timber trims and the rendered walls and caulk and seal them with a paintable flexible caulking material and paint to match.
  - (e) Re-render to strategic break lines the area of render affected by the stain on the south elevation of the building in accordance with the attached reasons. The re-render should be from the masonry articulation joint located at the living room window to the down pipe at the corner of that side of the House.
  - (f) Replace the caulking along the top of the tile splashback in the butler's pantry.
  - (g) Clear any render from each of the articulation joints and make good any damage to the render on either side of each such joint that occurs by reason of such removal.
  - (h) Repair and make good internal plaster cracks in accordance with the attached reasons.
- 2 The said work shall be done in a good and workmanlike manner using materials sufficient for the purpose and be carried out at mutually convenient times so as to minimise any inconvenience to the Applicants.
  - 3 Further order the Respondent to pay to the Applicants \$7,661.00.
  - 4 Order that the video of the drain inspection taken by the Respondent during construction remain on the Tribunal file and be available to be copied by any the parties if required.
  - 5 Liberty to apply if there should be any dispute or difficulty in regard to this order or the work ordered to be done.
  - 6 Costs reserved.

**SENIOR MEMBER R. WALKER**

**APPEARANCES:**

For the Applicant

Mr H. Tahn and Mrs N. Gualtieria in person

For the Respondent

Ms S. Kirton of Counsel

## REASONS

### Background

1. The Applicants (“the Owners”) are the owners of a house in Camberwell (“the House”). The Respondent (“the Builder”) is and was at all material times a builder carrying out domestic building work.
2. In 2012 the Owners and the Builder agreed that the Builder would design the House and construct it for a price of \$1.3 million. The Owners had previously inspected the Builder’s display home and were impressed by it and by the Builder’s claims of exceptional quality and attention to detail. The display home was a single storey house and in the course of the negotiations and discussions leading up to the design and ultimately the building contract a design was developed for a storey house with high ceilings and period features.
3. A building contract (“the Contract”) was signed by the parties on 24 February 2012 but the House was not completed until December 2014 when settlement occurred at the Builder’s office on 9 December. There were a number of outstanding matters that were set out in a list and these were to be completed in the New Year.
4. Further work was done by the Builder directed to dealing with the issues listed but agreement could not be reached on some matters. Finally, the Owners commenced these proceeding on 30 June 2014 seeking damages from the Builder of \$95,233.21.
5. At a directions hearing on 2 October 2014, directions were given for the preparation and filing by the Owners of a schedule of items remaining in dispute, and a schedule by the Builder setting out its defence to each item. Directions were given for the filing and service of experts’ reports and documents and quotations to be relied upon at the hearing. The matter was fixed for hearing on 21 January 2015 with an estimated duration of 3 days.
6. Mediations took place on 7 August and 12 December 2014 but the matter was not settled and it came before me for hearing on the date listed, that is, 21 January 2015.

### The hearing

7. At the hearing the Owners appeared in person and the Builder was represented by Ms Kirton of Counsel. The Builder had not filed any schedule in response to the items claimed by the Owners as required, nor had the Builder filed or served any experts’ reports. Ms Kirton suggested that, since it was a fairly straightforward defects claim and the Owners had their expert at the hearing, the matter could nonetheless proceed.
8. The two Owners were sworn in and gave evidence as to preliminary matters. They then called their expert, Mr Mamone who is an architect. The

hearing proceeded in a rather informal way, with Mr Mamone giving evidence and then being cross examined on each individual item.

9. During this process it became apparent that Mr Mamone had not costed some aspects of remedial work that formed part of the Owners' claim. The Owners produced a number of quotations which had not previously been served or had only very recently been served on the Builder.
10. Towards the end of the first day of the hearing it became apparent that so much new material had surfaced which the Builder had not had an opportunity to consider before the hearing that the matter could not proceed if natural justice requirements were to be met. Accordingly, the matter was adjourned part heard before me on 1 April 2015 with a further 2 days allocated. I gave directions for the filing and service of further material.
11. When the hearing resumed I heard further evidence from the Owners and from the Builder's staff. At the conclusion I inspected the House and informed the parties that I would provide a written decision.

### **Drainage next to garage**

12. The first issue concerned the drainage next to the garage. The driveway slopes down from the street to the garage entrance. The plans provide for a strip drain to extend the width of the garage entrance to collect the run-off from the driveway and drain into the stormwater system on the left hand side as one faces the House.
13. The plans bear the endorsement that the strip drain is to be provided "by others". It appears to be common ground that the Builder's contractual obligation was simply to provide a stormwater point to which the drain could be connected by whoever installed the driveway and the strip drain. A photograph taken during construction shows what appears to be a stormwater pipe which had been installed by the Builder emerging from the ground in approximately the required position.
14. The Owners had the driveway and strip drain constructed by others but whoever constructed the strip drain did not connect it to the stormwater pipe provided by the Builder. Instead, it was connected to an agricultural drain that had been laid by the Builder along the northern wall of the garage between the garage wall and the northern boundary of the site. This agricultural drain has no silt pit at either end and simply starts and finishes in the soil. As a result of this connection, any water running off the driveway collected in the strip drain and was then directed into the agricultural drain which then transported it into the soil adjacent to the north wall of the garage. According to Mr Mamone's evidence, this has caused some footing movement resulting in cracks in the render which he identified in his evidence.
15. It was a term of the contract that the Builder was not responsible for providing silt pits for the agricultural drain. Although, as a matter of courtesy, the Builder ought to have informed the Owners of the need to

provide silt pits there is no specific provision in the contract requiring it to do so and the Owners' own contractors should have known to do that. Further, whoever was engaged by the Owners to put in the strip drain ought to have known that it should not have been connected to the agricultural drain and, if the person had looked at the plans or even the site plan it would have been obvious that it was to be connected to the stormwater system in the manner shown on the site plan.

16. The Owners have since had the strip drain disconnected from the agricultural drain and engaged a plumber to connect the other end of the strip drain to the stormwater system. However in the course of doing so it was discovered that the stormwater pipe that the Builder provided proceeds under the ground for a short distance only and then stops. It was said to be not connected to the stormwater system. The Owners had to pay a plumber to dig up the paving and lay a stormwater pipe to the stormwater system and sought to recover the cost from the Builder.
17. It seems to have been acknowledged by the Owners at the first hearing that, since the strip drain should never have been connected to the agricultural drain, the cost of disconnecting it and connecting it to the stormwater system was not recoverable from the Builder, nor could the Builder be blamed for any damage resulting from the saturation of the soil along the north wall of the garage by water from the drain and any consequential cracking arising from that.
18. However it was asserted by the Owners that the storm water pipe provided by the Builder to receive the water from the strip drain was not connected to the storm water system.
19. At the second hearing, both sides produced video footage of the stormwater system. The Builder's footage was taken during construction when the storm water system was tested and before any issues about the pipe had arisen between the parties. That demonstrated that the pipe provided for the strip drain was indeed connected to the storm water system and was draining. Indeed, since the section of pipe in question also drained one of the downpipes next to the garage it must always have been draining.
20. The Owners' video showed a stormwater pipe that ends in what appears to be a sock of the type normally placed around agricultural pipes in the ground. It is not apparent how that arrangement was intended to function but one likely explanation is that someone who has laid an agricultural drain on the southern side of the property has discharged it into this storm water drain and, in doing so, has pushed the "socked" pipe into the stormwater drain too far, so as to block the flow of any water coming through the storm water pipe from the north. That would seem to be a landscaping issue. Precisely what rectification work was done by the Owners' plumber is unclear, that is, whether the agricultural drainpipe that was blocking the stormwater pipe was removed and shortened, or whether a

new storm water pipe was installed to take the storm water from the north of the property.

21. I am satisfied that the pipe supplied by the Builder was functional and that this part of the claim is not established. The Owners indicated that they would not continue to press this part of their claim if the Builder's video, which is of a special type that has not been able to be copied, remains on the Tribunal file. The Builder did not oppose that course and, although I find that this part of the claim fails in any event, I will order that the video remain on the Tribunal file and be available to be copied by the parties if required.

### **Battens**

22. The plans required central light points in two of the rooms to the left of the entrance foyer and in what appears to be a dining area at the rear of the House.
23. The Owners wished to hang chandeliers from these points similar to those they saw in the display home. They discussed the chandeliers with the Builder's employee who was preparing the plans and in the quotation provided to the Owners by the Builder dated 28 February 2011 there was provision for "5 batten holders for decorative light fittings".
24. The same provision was made in the list of inclusions for "the Monet", being the display home that they inspected. There is no similar provision in the specification and, as Ms Kirton points out, the other documents referred to do not form part of the contract.
25. However in paragraph 10.3 of the specification there is a provision that says that the Owners are to supply and install decorative light fittings after completion of the home at no cost to the Builder but that the Builder is to provide "batten holders – Qty 5".
26. The Owners complain that no provision was made by the Builder in the ceilings in the places where these lights were to be suspended for a batten holder sufficient to support the weight of the chandeliers that had been discussed with the Builder's staff. Ms Kirton says that there was no provision in the contract requiring any specific provision to be made.
27. The term "batten holders" is non-specific as to what type of batten holders was to be supplied. I think I have to interpret the specification in the light of the surrounding circumstances which are that it was the intention of the Owners to install decorative light fittings and it was acknowledged in the specification that they would be doing so. The ceilings were 3.3 metres high and so the decorative light fittings would be of a commensurate size. The display home had chandeliers which were discussed with the Builder's staff and the Builder knew or ought to have been aware that the batten holders to be provided in accordance with the specification would need to be sufficient to support decorative light fittings of the size and nature that was both discussed and contemplated.

28. Mr Dervish and Mr Dewaard of the Builder said that a batten holder fixed only to the ceiling plaster by toggle bolts could support a weight of up to 20 kilograms. Mr Tahn pointed out that extra noggings had been put in the walls to support towel rails. The real question is: “What sort of batten holders did the Contract require?” and I think the answer to that was, “Batten holders sufficient to support the light fittings contemplated by the parties”.
29. The Owners have installed the battens at a cost of \$495. I think this was the responsibility of the Builder and that sum will be allowed.

### **Doors - Two-pack paintwork and striker plates**

30. The internal doors installed in the House have been painted by a two pack process. According to Mr Mamone’s evidence this involves the doors being removed after being initially hung, sent to a factory and painted in a special way so that they have a very shiny surface.
31. Mr Mamone said that the paint has failed in regard to a number of doors. In the guest bedroom it is bubbling along the length of the decorative moulds. It is cracking in the walk in wardrobe door, the doors into the en suite, the door into the second bedroom, the door into the spare room on the south side of the House and the door into the walk in linen cupboard. Some attempt was made by the Builder to disguise the cracking by means of a caulking material.
32. Mr Mamone said that the failure of the paint work on the doors was systemic and that all of the doors need to be stripped back to bare timber, the mouldings attached to the doors securely fixed in consultation with the door manufacturer and then the doors need to be re-painted.
33. At the site inspection, damage of this nature was pointed out to me. It was acknowledged that the attempted repair with caulking material should not have been undertaken and that the doors should have been repainted. I think that was a sensible concession.
34. Some of the doors are affected and not all and I am not satisfied that it has been demonstrated that this is a systemic problem as suggested by Mr Mamone. I find that the doors identified need to be stripped back and repainted. The original contractor who painted the doors has agreed to remove them, strip and repaint them and the Owners are content for him to do this work.
35. The doors to be repainted are those to the Master Bedroom walk-in robe, both doors to the entry to the master bedroom and the ensuite, the two doors to the walk-in linen cupboard, Bedroom Four and the ensuite to Bedroom Four, Bedrooms Two and Three, the walk-in robe and ensuite to Bedroom Two, the ensuite to Bedroom Three, the doors and walk-in robe to Bedroom Five and the Laundry.
36. There is an additional concern involving the latching of the double doors in the various rooms. The striker plate mounted on the passive door in each

case is smaller than the frame into which it has been recessed so that, if the passive door is not entirely closed, the tongue of the active door strikes timber in the area to which the striker plate does not extend. As a result, the passive door to the master bedroom has split. Mr Mamone said that the installation instructions of the manufacturer of the door furniture had not been followed. It is apparent from the inspection that the striker plates are not suitable for the doors to which they have been fitted.

37. Ms Kirton pointed out, correctly, that the striker plates supplied were those mentioned in the specifications. She also suggested that specially manufactured striker plates would have been an extra cost. However this was a design and construct contract. It was for the Builder to specify adequate door furniture and ensure that the door furniture that it had specified was compatible with the doors that it intended to supply. It is not for a lay person to detect any inconsistency. That was an obligation undertaken by the Builder as the designer.
38. It seems to me that the Builder has failed to supply and install either doors or door furniture fit for the purpose in accordance with the warranty set out in s.8 of the Act. This part of the claim will be allowed, as will the claim for re-painting.
39. Mr Mamone assessed the damages with respect to this item at \$14,520, which includes taking down the doors, replacing those that had broken, stripping and re-painting and then re-fitting them. However I propose to direct the Builder to carry out the necessary work, including the replacement of the split door in the Master Bedroom.
40. It was put to Miss Gualtieri in cross-examination that she had admitted to a tradesman that she had caused the split by slamming the door but she denied it and offered a slightly different account of the conversation she had with the Tradesman. It was contemplated calling the tradesman but that would have necessitated a further day of hearing and I would still have been left with two different versions of a conversation which may or may not have been an admission. The Builder would have borne the onus of proof and so I think the decision not to call the witness was sensible in the circumstances.
41. The Builder has obtained a quotation for the manufacture and supply of specially designed striker plates that would be compatible with the doors. I shall order the Builder to fit this hardware to each of the double doors.

### **Garage door frame**

42. The door frame at the entrance to the garage was damaged by water. A section of the frame has been replaced but according to Mr Mamone's evidence it is starting to separate from the door frame. He said that the repairs performed were incomplete with the rendered wall left damaged from the repair and that gaps within the rendered wall and the timber door frame were left unsealed. He said that, since the repairs to the door frame



had been unsuccessful, the entire door frame should be removed and replaced, any damage to walls and timber skirtings adjacent to the door frame resulting from the removal and replacement of the door frame should be repaired and the gaps between the door frame, timber trims and the rendered walls need to be caulked and sealed with a paintable flexible sealant. No figure has been assessed for this item.

43. Looking at the attempted repair on site I am not persuaded that the entire door frame needs to be removed and replaced but the present appearance can be improved upon in order to address Mr Mamone's concerns. I will order that the section of architrave in question be sanded back and adequately fixed to the door frame and that any gaps between the door frame, timber trims and the rendered walls be caulked and sealed with a paintable flexible material and painted to match.

#### **External stain on render**

44. During the course of construction an egg was thrown at the House which caused a stain on the render. It was agreed upon possession that the Builder would rectify that and some attempt has been made to do so. However the cleaning effort has resulted in a patch which, according to Mr Mamone, is highly visible.
45. I saw this on site and although I would not describe it as "highly visible" it is able to be seen and the Builder has agreed to repair it. Mr Mamone said that the section of the wall needed to be re-rendered to strategic break lines. He said that the re-render required should be taken from the masonry articulation joint located at the living room window to the down pipe at the corner of that side of the building. He said that the total area of the wall required to be re-rendered 30 sq metres and he assessed the cost of repair at \$120 per square metre plus GST, amounting in all to \$3,960.
46. Ms Kirton suggested to Mr Mamone in cross examination that this was excessive. In the course of the ensuing discussion it appears that Mr Mamone has allowed \$1,200 for scaffolding and when one deducts that from the rendering cost as assessed by Mr Mamone his estimate amounts to \$92 a square metre. Mr Mamone defended the calculation on the basis that it was a relatively small area and it would be carried out by a contractor as a rectification. He said that no rectifying contractor doing this small area would charge as little as the \$30 a square metre suggested by Ms Kirton.
47. When the hearing resumed a quotation was tendered from a Mr Leo Abreu, who was the original renderer who rendered the House. After some discussion the Owners said that they had no objection to this man doing the job. I shall order the Builder to carry out the work on the understanding that it will be engaging Mr Abreu to do it.

#### **Stormwater**

48. The land upon which the House is built slopes down from the street towards the back boundary. For this reason the Builder considered that it would be

necessary to drain the stormwater into a soak pit at the rear of the property. It then transpired that there was a council drainage easement just the other side of the rear fence. Why this was not discovered is a mystery but no explanation was called for because this part of the claim is accepted by the Builder.

49. The Owners sought recovery of the \$4,950 charged to them by the Builder for the construction of the soak pit plus a further \$1,450 being expenses in connecting the stormwater to the Council drain. The amounts agreed to total \$6,400 which will be allowed.

#### **Garage door squeak.**

50. The Owners complain that the garage door squeaked excessively and that after unsuccessfully complaining to the Builder they had to get the supplier out to carry out a service. Following this service, the squeaking stopped.
51. The Builder claims that there was nothing wrong with the door and that it would have required a service by that time in any event. The Builder's witnesses said that these doors always make a noise because their nature. Miss Gualtiera said that the noise was a screeching sound and that they complained about it well before the twelve month period when it was due for a service.
52. Whether or not noise from a garage door is excessive must be a subjective matter and it is impossible to assess in retrospect. According to their evidence the Owners suffered a screeching noise when the door was operated. That was their real loss and this persisted until the time came for the door to be serviced. The cost of the service was \$120 and since the door was due for a service at that time I do not consider that the Owners have suffered the loss of that sum.

#### **Caulking.**

53. Some silicone applied along the top of the tile splashback in the butler's pantry needs to be replaced. This item was agreed and I shall order the Builder to attend to it.

#### **Parquetry.**

54. There was an unsightly mark on the parquetry floor in the main entrance hallway which was caused by the Builder's tradesmen pulling a roll of carpet along the parquetry. The Builder agreed to rectify the mark and some work was done which removed it for a while but the Owners claim that it has since returned.
55. Mr Mamone agreed that the mark was there and according to his evidence the floor will have to be sanded and re-finished. The claim is for 60 square metres but it transpired that the area in question was only 36 metres. The Owners have obtained a quotation for \$3,630 and another quotation for \$2,200 for the scope of works. The Builder claims that these are excessive and a figure of \$1,100 was discussed.

56. At the on-site inspection I was unable to see the mark complained of. Mr Tahn said that it was more noticeable at some times than it was at other times. According to page 12 of the *Guide to Standards and Tolerances* 1997, in order to find whether the appearance of the floor is within tolerance, I should observe it at a distance of 1500 mm. I looked carefully at the place indicated and was unable to see anything at all in terms of a mark or a blemish. As has often been said, the Guide is only a guide as to what is acceptable and it has no prescriptive force. Nevertheless, it is a useful guide as to what is acceptable and if I cannot see anything despite actively looking for it I cannot find that there is any defect by reason of its appearance. Mr Than made the valid point that a defect does not cease to be a defect just because it cannot be seen. However where the defect alleged is deficiency in appearance then how it looks is critical as to whether or not there is a defect.

### **Moving the rainwater tank.**

57. The plans required the air conditioning unit to be installed on the side wall directly below the vent for the range hood in the kitchen.
58. The plans show these air conditioning units to be very small and to extend only part of the way towards the vent. In fact, the units the Builder installed extended to just below the vent so that, where the air conditioning was operating, it blew across the vent and created noise.
59. The Builder acknowledged that there was a problem and an attempt was made to deflect the air away from the vent. When this did not work the Builder agreed to separate the two air conditioning units and move them away from the vent. After some discussion it was agreed that the Owners would pay for removing one air conditioning unit and the Builder would pay to remove the other.
60. This necessitated moving the water tank and on the day before the work was to be done the Builder's employee informed the Owners that the Builder would not pay to move the water tank. It seems to me that this is work that was rendered necessary by the defective design of the Builder and the amount paid by the Owners to move the water tank namely, \$400, will be allowed.

### **Installation of pool lights**

61. The Owners were to provide the pool lights and the Builder was to install them. It would seem that no advice was given to the Owners by the Builder in regard to the type of lights that would be suitable to be installed and those they supplied were 240 volt lights. The electrician refused to install them above the pool, saying that it would be illegal to do so.
62. An argument then ensued as to the responsibility for the mistake following which the Builder agreed to a suggestion by the Owners that the Owners would do it themselves and the Builder would allow a credit of \$366 for the light installation, subject to the Owners providing a Certificate of

Compliance from their electrician. Shortly after Miss Gualtieri's email making her proposal the Owners engaged their own electrician to install the lights. The installation required the provision of transformers and this increased the price. The figure of \$366 was calculated by the Owners on the basis of it being a proportion of the amount allowed overall for the installation of all lights to the pool. Ultimately, it cost them \$704 to install the lights with transformers. They now seek an order that the Builder pay them \$704.

63. It seems to me that there has been an agreement that the credit for the installation of these lights will be \$366. Since that agreement has been reached the Owners cannot go behind it and claim more. The agreed amount will be allowed.

### **Plaster cracking**

64. Some plaster cracks have been identified. None of it is major but some minor touch ups are required. Items pointed out to me on site included the Cornice in Bedroom two, where previous repairs have become visible, the cornice in Bedroom Four where there is an odd shaped hairline crack and the cornice in Bedroom three. The Builder expressed a willingness to attend to these matters and I will direct that it does so.

### **Exterior cracks**

65. The Owners complain about cracking in the render. They also complained about the presence of "expansion joints" which they said were not in the Contract. This seems to be a misunderstanding. Articulation joints are a necessary part of any construction and it would be defective workmanship if the Builder were not to provide them. Their purpose is to all allow movement to occur at designed places so as to avoid cracks to the fabric of the structure. They are often unsightly but this is mitigated by putting them, where possible, in places that are not obvious. In the present case there are articulation joints in the internal corners on either side of the entrance portico and by the study window closest to the portico. Those are shown on the plans. Mr Tahn complained about a gap in the light-weight panel above the garage which has been rendered over, presumably to disguise it.
66. Mr Mamone said that the cause of the cracking "may be directly occurring because of the incorrect installation of surface drain across the front of the garage". If that is indeed the cause then that was not as a result of defective workmanship of the Builder. The only defect shown to be due to the Builder is rendering over the articulation joints.
67. Mr Mamone said in his January report: "The cracking seems to have occurred either at decorative band panel joints or at masonry articulation joints." Those were the cracks pointed out to me on site.
68. Since the articulation joints are designed to receive movement I cannot find that a crack in an articulation joint is a defect. However the joint in the middle of the panel above the garage door has been rendered over and is

cracking on either side of the render. The defect here is not the cracking but putting render over the caulking material which should be removed. As Mr Mamone pointed out, render should not be applied over flexible mastic.

69. As to the decorative panel joints generally, the Builder claimed that the maximum length that could be obtained for the materials used was three metres and so they had to use two pieces. Mr Than said that his information was that specially ordered pieces could be obtained of longer lengths. This was not disputed but there is nothing in the Contract requiring that. Where two pieces have been used over the entrance to the House the join has been made in the middle. The Builder said that was for aesthetic reasons and I think it would have looked unbalanced if the join had not been centred. Joins in the moulding were pointed out to me by Mr Tahn but they appear to result from the distance exceeding the length of the material. The joins themselves do not appear to have been badly executed.
70. I shall order the Builder to clear any render from each of the articulation joints and make good any damage to the render on either side of each such joint that occurs by reason of such removal. It may be that the Owners would prefer to leave the articulation joint over the Garage door rendered, in which case, that may remain.

#### **Order to be made**

71. There will be an order that the Builder carry out the work described in these reasons. No time was suggested by either party although the Owners are understandably anxious that a time limit be fixed. Some of the work is extensive and timing is uncertain. I will allow a period of two months. If that should prove impracticable then an application can be made to amend the order but I would need to be satisfied that an extension of time was warranted.
72. As to the monetary part of the claim, I will order the Builder to pay to the Owners \$7,661.00, calculated as follows:
- |                        |                   |
|------------------------|-------------------|
| Batten holders         | \$ 495.00         |
| Storm water pit        | \$6,400.00        |
| Moving rain water tank | \$ 400.00         |
| Credit for pool lights | <u>\$ 366.00</u>  |
| Total                  | <u>\$7,661.00</u> |
73. The Owners also seek an order for the costs of the proceeding. Although they represented themselves they have had the expense of Mr Mamone's inspection, report and evidence at the hearing as well as the issuing fee and hearing fees. It may be that this is something the parties can agree upon themselves. Otherwise, I have heard no submissions about costs and so they will be reserved for further argument.

**SENIOR MEMBER R. WALKER**