

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP1456/2018

CATCHWORDS

Contract to lay concrete, surface alleged not level, cracks due to failure to saw cut, assessment of loss.

APPLICANT	Timothy Torres
RESPONDENT	360 Outdoor Developments Pty Ltd (ACN: 619 193 841)
WHERE HELD	Melbourne and 10 McGrath Street, Bellfield Victoria
BEFORE	Senior Member M. Lothian
HEARING TYPE	Hearing
DATE OF HEARING	23 May 2019
DATE OF ORDER	13 June 2019
CITATION	Torres v 360 Outdoor Developments Pty Ltd (Building and Property) [2019] VCAT 820

ORDERS

- 1 The respondent must pay the applicant \$4675.80 by 28 June 2019.
- 2 **I direct the Principal Registrar to send copies of these reasons and orders to the parties by email.**

SENIOR MEMBER M. LOTHIAN

APPEARANCES:

For Applicant	Mr T. Torres in person
For Respondent	Mr S. Brenchly, director

REASONS

- 1 The parties agree that there was a contract between them under which the respondent undertook concreting of parts of the applicant's front garden including the driveway and a path. They also agree the respondent was paid in full.
- 2 The applicant claims that there are a number of cracks in the concrete and that its surface is rough and uneven. The respondent admits that there are cracks but sought to question their cause. He suggested that they might have been caused by heavy vehicles on the concrete at the time when a brick fence was built by someone else, a pallet of bricks which appears in a photograph in the applicant's expert's report at page 8, or the construction of the brick fence.
- 3 At the end of the hearing I visited the site to look at the concrete with both parties.

Surface

- 4 While the surface is not as smooth as some I have seen, neither is it obviously defective. I do not know precisely what the parties contracted for regarding the appearance of the concrete.
- 5 I accept the respondent's evidence that the applicant was happy with the concrete when it was complete. This is consistent with text messages from the applicant to the respondent. There are concerns about other matters, but not about the finish of the concrete. I make no allowance for repairs to the surface of the concrete, other than to ensure that the surface appears consistent once the cracks have been repaired.

Cracks

- 6 With respect to the cracks, I note the expert reports of Mr Peter Hearn of Buy-Wise Inspection Services Pty Ltd for the applicant and Mr Tom Thorne of Melbourne Wide Building Inspections for the respondent. I was also assisted by the evidence given by Mr Thorne by telephone.
- 7 In accordance with Mr Thorne's evidence, I am satisfied that the cracks were caused by the respondent's failure to arrange to have crack joints sawn into the concrete as soon as reasonably possible after the concrete dried. I accept the applicant's evidence that this was an item he was seeking from the respondent from shortly after the concrete was laid and his requests were unmet. I am not satisfied that the applicant or any subsequent trade damaged the concrete.
- 8 I find that the respondent breached its contract to provide concrete paving of reasonable quality by failing to ensure that crack joints were installed in a timely manner, leading to the cracking which is now evident in the concrete.

Assessment of the applicant's loss

- 9 The question is therefore what needs to be done by the respondent to place the applicant in the position he should have occupied had the contract not been breached.
- 10 In the applicant's claim he sought \$10,500 to have the concrete taken up and reinstalled. This is not supported by Mr Hearn's report which states on the second page:

It is possible to cut expansion joints in now and maybe lightly grind concrete to a smooth finish and seal the concrete with a colour. Not sure if by grinding the concrete will affect the sealer and stay fixed to the concrete. [It is noted that crack joints are not expansion joints]

- 11 In the alternative, at the hearing the applicant provided a number of quotations of which the cheapest were saw cutting the concrete at a cost of \$350 plus GST, a total of \$385 and a quotation from HCS dated 20 February 2019 for \$4540.80 for the following works:

To grind concrete surface reducing exaggerated texturing

To pressure wash surface

To fill surface cracking cracks

To apply primer to surface

To apply 2 coats of spray down concrete compound – colour TBC

To apply 2 coats of clear sealer

To remove all rubbish

- 12 Mr Hearn's report was to the effect that all necessary work could be undertaken for a total of \$2530. The work he described was:

- i Concrete cutting for the minimum rate of \$220.

His opinion was that the necessary cutting would only take one to one and half hours. When asked about the amount of \$350 plus GST quoted to the applicant during his evidence by telephone, he said that the concrete cutting contractor might set a minimum time of half a day, which is not uncommon. He said that \$385 is therefore reasonable.

- ii Crack repairs of \$990 being 5 lineal meters at \$198 per lineal metre.

- iii Surface preparation of acid wash to etch surface and painting the entire concrete area for \$1320 being painting approximately 80 m² at \$16.50 per square metre.

- 13 Having seen the concrete I am satisfied that there is significantly more than five lineal metres requiring repair. I observed a few substantial cracks and some spalling at the edges of the cracks. I estimate that the length of cracks requiring repair is closer to 15 to 20 lineal metres. I also note that the

finished product should look like competently laid concrete, not like patched or repaired concrete.

- 14 I am satisfied that the reasonable cost of concrete cutting is \$385 inclusive of GST which the respondent must allow to the applicant. I am also satisfied that a fair cost to the applicant of the remaining rectification is in accordance with the quotation for \$4540.80, less part of the cost of grinding. In the absence of better evidence, I deduct \$250 for grinding other than grinding to make crack repairs inconspicuous. I allow \$4290.80 for the remaining rectification.
- 15 The respondent must pay the applicant:
\$385 for concrete cutting; and
\$4290.80 for the remaining rectification, a total of \$4675.80.

SENIOR MEMBER M. LOTHIAN