

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

VCAT REFERENCE NO. D14/2006

**DOMESTIC BUILDING LIST**

**CATCHWORDS**

Domestic building, review of decision of warranty insurer, builder's constructive refusal to undertake work ordered by warranty insurer, slip rule, correction of error

[2006] VCAT 687

<b>APPLICANT</b>	Trygg Builders Pty Ltd
<b>RESPONDENT</b>	Australian International Insurance Ltd
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member M. Lothian
<b>HEARING TYPE</b>	Small Claim Hearing
<b>DATE OF HEARING AND ORDER</b>	15 March 2006
<b>DATE OF AMENDING ORDER</b>	27 April 2006
<b>DATE OF REASONS</b>	27 April 2006

**AMENDING ORDER**

It having come to my attention that there was an arithmetic error in my order of 15 March 2006, I amend it pursuant to s119 of the *Victorian Civil and Administrative Tribunal Act 1998* to provide that the Respondent may only claim \$6,129.75 less the excess of \$750.00 from the Applicant, a nett sum of \$5,379.75.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES ON 15 MARCH 2006:**

For the Applicant	Mr D Lyons in person
For the Respondent	Mr C Ross, Solicitor

## REASONS

1. On 15 March 2006 I heard and determined the Applicant-builder's application for review against the decision of the Respondent-warranty insurer of 15 December 2005.
2. The Respondent's decision of 15 December 2005 was to approve payment of the home owner's claim of \$8,120.75, less an excess of \$1,000.00.
3. In accordance with the powers of the Tribunal under s60 of the Domestic Building Contracts Act 1995, I ordered that the Respondent's decision be changed to provide that the Applicant could seek in reimbursement only \$6,310.75 from the Applicant, less an excess of \$750.00.
4. On 27 March 2006 the Applicant sought reasons. In the hearing the Applicant complained that the home owner had not given access to enable work to be done. It is accepted that the home-owner insisted on knowing what work the Applicant intended to do as a condition of allowing access, and that the Applicant repeatedly failed to say that all work ordered by the Respondent would be undertaken. The Applicant's action amounted to a constructive refusal to do all the work ordered by the Respondent. It was therefore reasonable for the Respondent to decide to pay the home-owner instead of continuing to require that the Applicant return to site to undertake the scope of works.
5. The Application stated the grounds for application as:

“The Owner of the property has refused us admittance to the property ... to ascertain the quantum of the claim for rectification”.

6. The Applicant did argue that the quotation by CRA Constructions, which I found otherwise reasonable, contained additional items which were not included in the scope of works.
7. The value of additional items of \$1,810.00 was deducted from the CRA Constructions quotation of \$8,120.75. I now realise that my calculations were in error, as I failed to also deduct GST of \$181.00 from that quotation.
8. The excess figure of \$1,000.00 was the subject of Ms MacKinnon-Love's affidavit, particularly exhibit MML-27. It is accepted that an excess of \$750.00 was born by the home-owner, rather than \$1,000.00 as originally advised by the Respondent to the Applicant.
9. It follows that the nett sum recoverable by the Respondent from the Applicant is \$5,379.75.

**SENIOR MEMBER M. LOTHIAN**