

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. D146/2014

CATCHWORDS

Domestic building – strip flooring - cupped and bridging - caused by dampness – source of dampness - evidence

APPLICANT	Ruel Valencia
RESPONDENT	Pride Homes Australia Pty Ltd (ACN: 088 194 094)
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	4 April 2014
DATE OF WRITTEN REASONS	18 September 2014
CITATION	Valencia v Pride Homes Australia Pty Ltd (Building and Property) [2014] VCAT 1163

WRITTEN REASONS PROVIDED FOLLOWING THE HEARING

I heard this proceeding on 4 April 2014. The Applicant appeared in person and the Respondent builder was represented by its director Mr Santos.

After hearing evidence I ordered the Respondent to pay to the Applicant \$135,467.20. I gave verbal reasons for the decision but a request has now been received for written reasons.

What follows is an edited version of what I said at the hearing.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicant	In person
For the Respondent	Mr Santos, Director

REASONS

The Application

1. This is an application by Mr Valencia in regard to a house in Cairnlea built for him by the Respondent builder.
2. The house has an attractive timber floor but the floor boards are cupped, severely in some places, and some boards have bridged. It was common ground that this is due to the affect of water on the floor boards.
3. The property was inspected by Mr Karkut from the Building Commission a on 9 May 2012 and his report, which is relied upon by the Applicant, was produced. After examining the floor, Mr Karkut said that in his opinion the problem was due to a lack of subfloor ventilation. He said there was no sub-floor ventilation on the front elevation of the house and quite inadequate ventilation on the other elevations. He said that such ventilators as there were had been substantially blocked.
4. The photographs that form part of his report generally show fairly damp conditions under the house.
5. A licensed builder, Mr Randich, also inspected the house and provided a report. He agreed with the opinion of Mr Karkut. He said that to rectify the problem it will be necessary to put in more ventilators and increase the ventilation to the degree required by the Building Code of Australia. He also said that there were insufficient articulation joints and these will need to be cut in.

The floor rectification

6. The floor is yellow tongue particle board flooring material laid on Oregon beams. The 18ml strip flooring has been attached to the yellow tongue. Mr Randich says that because of this method of construction, and because the moisture content of both the strip flooring and the yellow tongue is very high, in order to rectify it, the whole lot is going to have to come up, new yellow tongue is going to have to be put down and new flooring laid on top of that. Quite obviously, one would do that after the ventilation has been increased. He has quoted \$120,000 to do that.
7. Apart from Mr Randich's quotation there is no other evidence of the cost of this scope of works.

Miscellaneous items

8. There are other miscellaneous defects with respect to which the Applicant has claimed damages of \$2,000.

The Respondent's case

9. Mr Santos, the Director of the Respondent, disagreed that the problem with the dampness in the floorboards was due to lack of subfloor ventilation. He pointed to the fact that the base stage of the construction was inspected by

the building inspector and passed. He said that it would not have been passed if there had not been sufficient ventilation.

10. He said that the flows of air from the vents that were blocked by sub-floor timbers could bypass the blockages. He also pointed to the fact that there was a certificate of occupancy issued by the building surveyor by which the house was certified as being suitable for occupation.
11. Quite obviously, the mere fact that the building surveyor issued a certificate of occupancy does not mean that the work is free from defects. It indicates that the building surveyor considered the house to be suitable for occupation which is quite another matter. In any case, I have to arrive at my own opinion as to the quality of the work on the basis of the evidence before me.
12. As to the flooring, the issue is, what is the cause of this dampness? Mr Santos said that he crawled under the house on a wet day and saw water flowing by the side of the wall next to the footing. From the photograph I could see that there was water lying there, although I could not see whether it was flowing or not. Mr Santos said the likely source of the water was the roof. He suggested that there had been people up on the roof, such as the man who installed the television antenna, for whom he was not responsible. If they were not his workmen that is quite true
13. Mr Santos also pointed to what appeared in a photograph to be condensation on the underside of the Oregon beams supporting the yellow tongue. He suggested that this indicated that water was coming from the roof. I think that if the water comprising the droplets that I saw in the photograph came from the roof they would not have been on the underside of the beams. I prefer the expert evidence as to the source of the water and think that what I saw at the bottom of those Oregon beams is condensation. There is a build up of moisture under the house and I think the overwhelming expert evidence is that it is due to inadequate ventilation. Since that is a building defect it is the responsibility of the Respondent. That part of the claim is established.

The claim for the miscellaneous items

14. The miscellaneous items for which \$2,000 is claimed are poorly fitted French doors, laundry cupboard doors not installed, gaps around windows, guttering not properly levelled, gutters inadequately drained, missing roof tiles, leaking garage roof and a collapsed garage ceiling following water penetration.
15. Photographs of all of these complaints have been tendered and I find them established.
16. Mr Randich said that it would cost more than \$2,000 to fix these problems and so I will allow the amount claimed.

Accommodation while the repairs are carried out

17. If the whole floor of the whole house comes up the house will quite obviously be uninhabitable while the repairs are being conducted. The work is estimated to take eight weeks. All the furniture will have to be removed from the house and stored for that period.
18. The Applicant has obtained a quotation of \$3,467.20 to have somebody pick up all their belongings, store them for eight weeks and then bring it back again. To accommodate the Applicant, his wife and their two children for eight weeks is going to cost \$10,000.
19. So the amount claimed is the total of these various sums, which is \$135,467.20.

Conclusion

20. Apart from Mr Santos, there was no expert evidence led by the Respondent to contradict the evidence of Mr Karkut and Mr Randich.
21. There is no substantive evidence to contest the evidence of the Applicant or the amounts that he has claimed. I have to find the case proven and there will be an order for the amount claimed of \$135,467.20.

SENIOR MEMBER R. WALKER