

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
CIVIL DIVISION**

**DOMESTIC BUILDING LIST**  
[2005] VCAT 1441

D690 / 2004

**APPLICANTS:** Youssef Youssef and Samia Youssef  
**RESPONDENT:** Vero Insurance Limited  
**WHERE HELD:** Melbourne  
**BEFORE:** Rohan Walker  
**HEARING TYPE:** Small Claim Hearing  
**DATE OF HEARING:** 23 March 2005  
**DATE OF ORDER:** 30 March 2005

**ORDER**

1. The Respondent's decision to reject the claim with respect to the tiling is reversed but the the decision with respect to the sliding door is confirmed.
2. Costs are reserved.

**ROHAN WALKER  
SENIOR MEMBER  
DOMESTIC BUILDING LIST**

**APPEARANCES:**

For: Applicant: Mr Youssef in person  
For: Respondent: Mr B. Powell of Counsel

## **REASONS FOR DECISION**

### **Background**

1. The Applicants are the owners of a dwelling house at 134 Cameron Parade, Bundoora. During 1999, they had a second storey extension built on the house which included external tiled balconies to the front and rear and an internal sliding door. The work to carry out this extension was domestic building work and a policy of domestic building insurance issued by the Respondent was in force with respect to it.
2. On 17 June 2004 the Applicants submitted a claim to the Respondent alleging that the tiles on the upstairs balcony needed to be replaced and that the sliding door in a bedroom was defective and needed to be repaired or replaced. The Respondent inspected the property and, by letter of 9 September 2004, rejected the claim on the ground that no breach of statutory warranty had occurred. The Applicants now appeal against the Respondent's decision to reject their claim.

### **The hearing**

3. The matter came before me for hearing as a Small Claim on 23 March 2005. Mr Youssef represented himself and his wife and the Respondent was represented by Mr Powell of Counsel. Mr Youssef relied upon the evidence of an architect, Mr Busby, and the Respondent relied upon the evidence of a building consultant, Mr Walsh. Both witnesses were qualified to give expert evidence and I adjourned the hearing on site so that I could inspect the work and more readily understand their respective views.
4. It would seem from the evidence that the property has deteriorated somewhat since Mr Walsh first inspected it, but I agree with Mr Busby that the defects have arisen from defective workmanship of the builder.

### **Findings**

5. In regard to the tiling, a number of problems were apparent:
  - (a) The extent to which the vertical tiles around the edge of the front balcony had been stuck to the substrate is highly questionable. One such tile had fallen off and

the indication on the substrate was that only a comparatively small amount of glue had been applied. Mr Busby said this was inadequate and I accept that evidence.

- (b) In another position, parallel to the driveway, the vertical tiles have bowed out, suggesting perhaps an inadequate fixing of the substrate to the perimeter beam supporting the external edge of the balcony.
  - (c) Many of the horizontal tiles were drummy;
  - (d) The fall of the balcony should have been away from the house but in some places it was either level or towards the house.
  - (e) Although the substrate for the horizontal tiles appears to have been painted with some preparation, this does not appear to have been effective to exclude all water. There was evidence of water penetration under the soffit in the corner of the balcony near the driveway.
  - (f) It is questionable whether the compressed fibrocement sheet to which the horizontal tiles were attached is of the thickness required by the plans. Mr Busby believes that it is not. This ought to be investigated.
  - (g) The level of the balcony adjacent to the house appears to have dropped, leaving substantial horizontal cracking between the balcony and the vertical tiles that have been glued to the brick work of the house. In addition, this has deprived the horizontal tiles at the doorways of support and pieces have broken off.
  - (h) There is considerable grout staining to the brickwork of the house, the surface of the tiles and other places which ought to be removed.
  - (i) There is cracking around the base of the structural posts of the veranda.
  - (j) There are no expansion joints in any of the tiling which may explain why there are so many drummy tiles.
  - (k) The strength of the veranda itself is questionable since the width of the horizontal cracking is not uniform, suggesting uneven deflection of certain parts of the veranda.
6. I accept Mr Busby's evidence that the tiling all needs to be removed, the substrate investigated for compliance with the drawings, the structural sufficiency of the balcony

needs to be investigated to ensure that it complies with the drawings and, after any necessary rectification work is done to bring it into conformity of the drawings, the horizontal and vertical tiles on both balconies need to be replaced.

7. The wardrobe door does not slide within the wall cavity but is fitted to the inside face of the bedroom wall. There is an aluminium track fixed to the wall, covered by a timber pelmet. The weight of the door is supported by rollers which separate an upper track fitted to the door from the lower track fitted to the wall. There is provision for adjusting the height of the door immediately below the track but in order to carry out such an adjustment, it would be necessary to remove the pelmet.
8. At the time of the inspection the door had been removed and was leaning against the wall. It still had the upper track fitting attached to it, although this was substantially bent. The pelmet was also detached and the lower door track was still fixed to the wall. The runners have been discarded. I asked Mr Youssef about some dried blood in the track and he said that it had fallen on his wife but did not say how this occurred.
9. The bottom of the door is grooved to take the tongue of a plastic guide that was fitted to the floor. The tongue on the plastic guide attached to the floor had been broken off. Mr Youssef said that it had broken but did not say how.
10. The section of the track attached to the door was considerably distorted and it seems to me that to bend it to that degree would have required substantial force. It looks as though someone has wrenched the door off.
11. The plans which were produced show a hinged door to the wardrobe. Mr Youssef said in evidence that he had requested the builder to put in a sliding door that slid into the wall cavity, similar to a sliding door on the ground floor which he showed us. He said that there was no written variation but the builder agreed to change it to a sliding door at no cost. It appears that the request for this change was made after the framing had been done. For a builder to hang a sliding door at no additional cost would suggest a door suspended externally to the wall as was supplied. To provide a sliding door that slides into the wall space would require the framework to be altered and a special unit to be purchased and installed. This would be a considerable additional cost to the builder and

the fact that the verbal agreement was to provide a sliding door at no cost suggests to me a door of the nature of that he supplied.

12. I am not satisfied that the builder was in breach of the contract by providing an external sliding door. I am also not satisfied that the door was defective. The damage to the track that I saw could only have been caused by considerable force and I think the likelihood is that it was caused by the owner removing it.

### **Conclusion**

13. The Respondent's decision to reject the claim with respect to the tiling is reversed but the decision with respect to the sliding door is confirmed. I have not heard from the parties in regard to costs. Clearly it would have cost the Applicants a substantial sum to have Mr Busby inspect the property, prepare his report and then attend the hearing, both at the Tribunal's premises and then on site. Nearly all of his report was concerned with the tiling. Very little attention was paid to the sliding door. An insured is entitled to the reasonable cost of enforcing his rights under the policy but I will reserve costs so the matter can be brought back before me if an agreement between the parties cannot be reached.

**Rohan Walker**  
**Senior Member**