

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING & PROPERTY LIST

VCAT REFERENCE NO. BP910/2018

CATCHWORDS

Domestic building work – defects – guarantee under s.60 of *The Australian Consumer Law* – warranties under s.8 *Domestic Building Contracts Act 1995*

APPLICANTS	Dina Greco, Silvio Greco
RESPONDENT	Ziaullah Basiri t/as Top Job Handyman Services
WHERE HELD	Melbourne
BEFORE	Senior Member S. Kirton
HEARING TYPE	Hearing
DATE OF HEARING	8 April 2019
DATE OF ORDER	16 April 2019
CITATION	Greco v Basiri (Building and Property) [2019] VCAT 555

ORDERS

1. The respondent must pay to the applicants the sum of \$25,945.90.
2. The respondent must, in addition, reimburse to the applicants the fees paid by them of \$821.90.

SENIOR MEMBER S. KIRTON

APPEARANCES:

For the Applicants

Dina Greco, Silvio Greco, in person

For the Respondent

Ziaullah Basiri, in person

REASONS

1. In April 2017 the applicant owners engaged the respondent builder to carry out a renovation of their home. There was no written contract. The owners were provided with the builder's details from a friend and met him for the first time at their house. They told him what work they wanted done, and he provided them with a verbal estimate of the price. The work to be carried out included repainting the whole house, laying new floor tiles in most rooms of the house and laying a floating floor in one bedroom. The builder has carried out the work and the owners have paid the builder in full.
2. As the builder was supplying to the owners as consumers, services in trade or commerce, the owners are entitled to the benefit of a guarantee under s.60 of *The Australian Consumer Law* that the services supplied by the builder would be rendered with due care and skill.
3. Further, as the builder was to perform work within the meaning of *domestic building work* as defined in the *Domestic Building Contracts Act 1995*, the owners are entitled to the benefit of the implied warranties regarding the work set out in s.8 of that Act, including the warranty created by s.8(a) that the work would be carried out in a proper and workmanlike manner.
4. The owners complain that the work carried out by the builder was done defectively. They obtained an expert report from Michael Panettieri of Built In Style Pty Ltd. As part of the hearing, I inspected the property. My findings in respect of the alleged defects are made based on the report and my own observations on site, and the *Guide to Standards and Tolerances* published by the Victorian Building Authority (the Guide).
5. I am satisfied that the following items of the builder's work were not rendered with due care and skill or carried out in a proper and workmanlike manner.

Floor tiles

6. Most of the house is laid with white 600 x 600 square floor tiles. The tiles were provided by the owners, and the adhesive and grout was provided by the builder. Many areas of tiling are not level, with noticeable lipping between tiles. The tiles underneath the skirting boards are not level. Cut edges have not been done neatly or professionally leaving large gaps around door jams. The tiles were laid around the dishwasher, not underneath it, so that the dishwasher cannot be removed. Further, grout is falling out in areas including the hallway, kitchen and living room.
7. These issues are classified as defective work according to the Guide, as follows:

Clause 11.03: Faulty installation of tiles is defective if caused by the builder's workmanship.

Any fault in the tiles is the responsibility of the owner, except where faults in the tiles should have been apparent to the builder at the time of laying, and these faults were not brought to the owners attention.

Clause 11.06: Grout is defective if it becomes loose within 24 months of handover.

Clause 11.08: Except where tiles have distortions inherent in the manufacture, tiling is defective if it has joints that are not uniform, of even width, aligned or in the same plane.

Clause 11.09: When measured with a straightedge, tiling is defective if the finished surface of the tiling is not flat and true to within a tolerance of +/- 4mm in 2m from the required plane.

Tiling is defective if the lippage between two adjacent tiles exceeds 2mm. In the case of tiles where the surface has been ground flat, for example polished tiles, tiling is defective if the lippage exceeds 1.5mm...

8. The builder's defence was that he acted on the owner's instructions, in laying the new tiles over the existing tiled floor. The old tiles were 300 x 300mm which meant that the new larger tiles could not be laid flat, he said. The owners agreed that they had allowed the builder to lay the new tiles over the existing, but said he had told them this would be an acceptable result. They purchased the tiles from National Tiles and were told by the supplier that provided the builder used the appropriate adhesive, there would be no problems with laying new over old. The builder's evidence was that he did not discuss with Mr Greco using a flexible adhesive or a thicker mortar bed, as he did not think the owners would pay for it.
9. I am satisfied that the parties agreed that new tiles would be laid over the old. I am also satisfied that the builder did not advise the owners that he would not be able to achieve a satisfactory result. In circumstances where the builder was aware of the risk of laying larger tiles over smaller, and has admitted he was aware of the option of using a thicker or different base, it is not a defence to now say the problem was the old tiles.
10. Further, the other issues with the tiling, such as the excessive cut outs, the failure to achieve a level under the skirting boards, the boxing in of the dishwasher and the grout falling out, are not the fault of the old tiles.
11. Accordingly I am satisfied that this work is defective. The owners seek to be put in the position they would have been in had the floor been correctly laid. As it is not possible to now lay a third layer of tiles, it will be necessary to remove the existing and lay a new floor. They have obtained a quote from an independent tiling company to do this work at a cost of \$11,000. Further they will need to provide new tiles at a cost of \$2175.90. They will also need to engage a carpenter to remove the existing skirtings

and replace them. They obtained a quote to do this for \$3580. Mr Basiri agreed during the hearing that these prices were reasonable. I will allow these amounts.

12. The owners also seek the cost of seven nights' accommodation elsewhere, as they say they will have to move out of their house while the tiles are being removed and replaced. They did not move out of their house during the builder's works, because the tiles were being placed over the existing, and so there was little dust or noise. However with the need to remove all tiles, they say there will be significant dust and noise to contend with. Mr Basiri said that the tiles could be removed room by room without using a jack hammer, which would minimise the dust and noise.
13. I note Mr Basiri's evidence but I do not think it reasonable to require the owners to stay in their home while the floors are removed. The tiles cover every room except the bedrooms. To remove and replace them room by room would be a far longer process than doing it all in one go, and the owners' tiling quotes are given on the basis of all work being carried out at once. I allow this claim. The owners have provided a quote for \$1940 from the Quest apartments near to them, for a one bedroom apartment for seven nights. Mr Basiri did not challenge the amount quoted.

Painting

14. The builder agreed that his scope of work was to repaint the house internally, including doors and timber work, and Mr Basiri's evidence initially was that he had completed this work. Later in his evidence, when I asked him how he explained the areas that had not been painted, he said that he had not finished the job and would have come back after he returned from overseas. That evidence contradicts his first statement that the painting was finished, and is not consistent with the fact that Mr Basiri demanded and received payment in full for the work before he left for overseas. I do not accept it.
15. It was obvious during my inspection that the painting has not been carried out in a proper and workmanlike manner. There are many examples of areas where the paint varies in colour. While notionally it is all a white colour, it appears as if different batches of paint were tinted to different shades of white. Mr Basiri said that he tinted the paint himself, using colours he had, which is consistent with the end result lacking uniformity.
16. Further, there are areas where paint coverage is lacking. Mr Basiri said he rolled every area with two coats, but this was not apparent during my inspection. Further, there are areas not completed at all, such as the skirting in the toilet and laundry. There are also signs of brush overruns along the cornice and wall junction, on the window frames, and mirror frames in the ensuite.

17. The Guide sets out the following standard for painting work:

Clause 12.02: Paintwork is defective if the application has blemishes such as ... starved paint areas, colour variations, surface cracks, irregular and coarse brush marks, ... Non-uniformity of gloss level and other irregularities in the surface that are visible from a normal viewing position.

Paintwork is defective if the application results in excessive over-painting of fittings, trims, skirtings, architraves, glazing and other finished edges.

18. I am satisfied that the builder's work does not reach this standard. The owners provided a quote to have the house repainted at a cost of \$6500. Mr Basiri agreed this price was reasonable. I will allow this amount.

Laundry and toilet doors overcut

19. The builder agreed that he had made a mistake in over cutting the laundry door. He agreed he would replace it with a new door. The owners also claim that the toilet door was overcut. Mr Basiri's evidence was that he cut it where Mrs Greco told him to, as she wanted to put a mat underneath the door. The owners denied that conversation. I prefer the evidence of Mrs Greco to that of Mr Basiri and consider it more likely that he made the same mistake with the toilet door as he did with the laundry door. The owners claim the cost of \$50 per replacement door. Mr Basiri agreed that figure was reasonable. I will allow \$100.

Front door closer broken

20. The automatic closer to the front door was broken during the time the builder was on site. The owners say that the builder either removed or broke the closer while working and should have replaced it. They seek \$50 to have this repaired or replaced. Mr Basiri said that he had removed the pin and was surprised it had not been put back again. He disputed the cost of \$50, saying it just requires the pin to be put back.
21. In circumstances where Mr Basiri has agreed that he did alter the closer unit, and has not replaced the pin or given it to the owners to use, I am satisfied that he should compensate them for this item. Even if it simply requires a pin to be reinserted, it will take some time and labour to obtain a new pin and/or to engage a handyman to carry out the work. I will allow \$50.

Damaged ladder

22. The owners say that the builder used their small step ladder while carrying out the work and damaged it. They seek \$50 to replace it. Mr Basiri denied any knowledge of using the ladder or of damaging it. In circumstances where I have not been given any details of when and how the ladder was used, any photographs of the damage, or what it would cost to repair or replace, I do not allow this item.

Other defects

23. The owners complained of other defects and incomplete work, which are set out in their report and which they showed me on site, including the laying of the floating floor in the bedroom, the poor application of silicone in the ensuite and the incomplete staircase to the garage. I am satisfied that these are a failure by the builder to be render his work with due care and skill, or in a proper and workmanlike manner. However the owners do not claim any extra amounts to rectify these items, so I need not address them further.

CONCLUSION

24. In performing his work defectively, the builder has breached the guarantee created by s 60 of *The Australian Consumer Law* that the services supplied would be rendered with due care and skill. Further, the builder has breached the implied warranty created by s 8(a) of the *Domestic Building Contracts Act 1995* that the work would be carried out in a proper and workmanlike manner.
25. The owners are entitled to damages in respect of the rectification of defective work assessed in the sum of \$25,345.90. I am satisfied also that it would be fair to make an order that the builder pay them for the cost of the expert report they obtained, under s.109(2) of the *Victorian Civil and Administrative Tribunal Act 1998*, being \$600.
26. Further, as the applicants have been substantially successful in the claim, they are entitled under s 115B of the *Victorian Civil and Administrative Tribunal Act 1998* to an order that they be reimbursed by the respondent the fees they have paid, in the sum of \$821.90.

ORDERS

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SENIOR MEMBER S. KIRTON