

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. D1127/2013

CATCHWORDS

Work and labour – defective work – assessment of damages

APPLICANT	Mr Thomas Gribbin
RESPONDENT	Mr Angie Santoro
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Hearing
DATE OF HEARING	6 March 2014 and on site 2 July 2014
DATE OF ORDER	2 July 2014
CITATION	Gribbin v Santoro (Building and Property) [2014] VCAT 800

ORDER

Order the Respondent to pay to the Applicant \$6,000.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicant	In person
For the Respondent	In person (No appearance on 2 July 2014)

REASONS

Background

- 1 The Applicant, Mr Gribbin (“the Owner”), claims damages from the Respondent, Mr Santoro (“the Concreter”), with respect to allegedly defective concreting work done at the Owner’s home in Sandhurst Road Wantirna.
- 2 The work was done pursuant to a written quotation for a price of \$4,000. It was to be a pattern paving using stencils. There were some drains incorporated into the work and the area to be paved was under a pergola area, around the back of the house and a pathway to the garage.

The work

- 3 The concrete was laid on 9 April 2013. Prior to work commencing the Concreter and his workmen had asked the Owner whether he wished to go ahead with the pour in view of the fact that rain was expected later that day. The Owner had arranged for friends to help him erect a pergola and so elected to proceed with the work. The house was being renovated at the time and did not have any guttering. This was not noticed by the Concreter at the time.
- 4 According to the Owner’s evidence the concrete truck arrived late and he had to assist the Concreter and his workmen to barrow the concrete in. After the concrete was poured and levelled the stencils were applied and then the colour. The stencils were then removed to create the appearance of a tiled surface. The job was finished by about 4:30 p.m.
- 5 The Owner said that when the Concreter’s workmen had finished he criticised some aspects of the work but was assured that it would look all right when the concrete dried and it was sealed. This is denied by the Concreter and his witness, Mr Plaggemars who say that he was happy with the work. Having seen the work I would be surprised if some complaint had not been made on the day. I prefer the Owner’s evidence.
- 6 On the same evening the concrete was laid it rained heavily from about 6:00 p.m. The Concreter says that the Owner rang him asking what he could do and he told the Owner that he could do nothing but that he should not walk on the concrete.
- 7 The concrete was sealed in early May 2013.

Complaints

- 8 It is not disputed that some complaints were made about the work and the Concreter or his workmen returned on four occasions to do patching.
- 9 By the fourth attempt at rectification the relationship between the parties had deteriorated and the Concreter claims that the Owner threatened him. He said that on the advice of the police he did not return to the site.

The hearing

- 10 The matter came before me for hearing on 6 March 2014 with one hour allocated. I heard from Mr Gribbin and Mr Santoro and Mr Plaggemars. In the course of the evidence it appeared that the photographs that I was shown by the Owner were taken before the concrete was sealed and before the repairs were complete. I therefore adjourned the matter to an on site hearing with a further hour allocated so that I would have an opportunity to inspect the finished result.
- 11 The hearing resumed at 10 am on 2 July 2014 at the site. The Concreter did not appear and, after waiting for 10 minutes I commenced the inspection. A builder was present, a Mr Feltham, who had provided the report which was relied upon at the earlier hearing. He and the Owner pointed out various aspects of the work.
- 12 When I left about half an hour afterwards the Concreter had still not appeared.

Defects

- 13 In his report Mr Feltham referred to the following defects:
 - (a) Ponding in the path at the back of the house where the level of the concrete dips, instead of following an even fall;
 - (b) The concrete is substantially out of level at the entrance to the garage where, according to Mr Feltham, it appears that the Concreter had run short of concrete. There is also an uneven step down from the garage to the pathway. The high point is in the left hand corner and it looked to me as if the intention had been to set the level there, where it is highest, but the level drops sharply from there to the right;
 - (c) Various areas have a bad finish. Many such areas were pointed out to me on site and I agree that the finish is poor. Mr Feltham suggested that the job had been rushed but whether or not that is the explanation I agree with his opinion that the finish is not in a proper tradesmanlike manner;
 - (d) The border under the pergola is not done correctly. In one place there is no edging and in another where the 45 degree paving is 100mm out of square with the border. It is also obvious from the grout lines that the 45 degree paving is not set at 45 degrees;
 - (e) Border lines are out of parallel.
- 14 Additional matters that were pointed out at the first hearing and again on site were the very poor finish of the steps, one of which was also out of level, the discolouration where the surface had been reworked by the Concreter and bleeding of colour into the grout lines.
- 15 I agree with the Owner and Mr Feltham that the work is not done in a proper and workmanlike manner and requires rectification. Although I

accept what the Concreter said about the rain it does not appear to me that the substantial defects noted could be blamed upon the rain that fell after the work was done. That might have affected the surface appearance to some degree but the serious defects relate to the way the work was done.

- 16 Mr Feltham said that the problems could only be rectified, either by pulling up the concrete and starting again at an estimated cost of \$7,000, or by paving over the concrete with concrete pavers at a cost of \$6,000. I accept that evidence.
- 17 I asked the Owner whether there was any reason to prefer the first alternative over the second, which was cheaper and he said there was not. I therefore assess damages at \$6,000.

Order

- 18 There will be an order that the Concreter pay to the Owner \$6,000.

SENIOR MEMBER R. WALKER