

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

VCAT REFERENCE NO. BP759/2017

**CATCHWORDS**

Domestic building, alleged defects, plumbing and electrical works undertaken by unregistered person to the knowledge of the owner, refund, pergola smaller than contracted for, damages reduced to take into account "cash discount".

<b>APPLICANT</b>	Ms Sarah Stand
<b>RESPONDENT</b>	Revive Services Pty Ltd (ACN: 164 313 786)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	M. Lothian, Senior Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	21 March 2018
<b>DATE OF ORDER</b>	6 April 2018
<b>CITATION</b>	Stand v Revive Services Pty Ltd (Building and Property) [2018] VCAT 533

**ORDER**

- 1 The respondent must pay the applicant \$1,682 forthwith.
- 2 As I am satisfied that the applicant has been substantially successful in her claim, under s115C of the *Victorian Civil and Administrative Tribunal Act 1998* the respondent must also pay the applicant her filing fee of \$62.70 forthwith.
- 3 **I direct the Principal Registrar to send copies of these orders and reasons to the parties by email.**

M. Lothian  
**Senior Member**

**APPEARANCES:**

For Applicant	Ms S. Stand, by telephone.
For Respondent	Mr D. Dodd, husband of Ms M. Dodd, director, by telephone.

## REASONS

- 1 Ms Stand claims that various works undertaken for her by Mr Dodd, on behalf of Revive, the respondent company, were not in accordance with the contract between them. Her claim is for repayment of \$3,000.
- 2 Because Ms Stand now lives in Western Australia and Mr Dodd in Mildura, the hearing was conducted by telephone. Both parties gave their evidence on affirmation.

### Pre-contract state of the house

- 3 The work was at the house then owned by Ms Stand in Red Hill, Victoria. Before the work was done there was a partially separate laundry at the rear of the house, with translucent sheeting that extended from the back of the house, over the area between the house and laundry, and over the laundry itself. There was also a full height wall running between the house and the laundry on the side of the roofed area away from the back door of the house. The result was that the area between the house and the laundry was enclosed on three sides: by the rear wall of the house, the closest wall of the laundry, and the wall between them. It was open on the side towards the back door of the house.
- 4 The roof, before the work was undertaken, sheltered both the electrical cable and the hot water pipe that ran from the back of the house to the laundry and they were attached to the roof structure.

### Contract

- 5 I am satisfied that Ms Stand and Revive entered a contract for building work in about March 2017.
- 6 The parties disagree about precisely what Revive was obliged to do. They agree that there was a quotation dated 3 March 2017 which included the following:

DETAILS OF GOODS TO BE SUPPLIED OR WORKS  
UNDERTAKEN

Re screw complete roof on hose, re fall gutters, replace 3 sheets of roof iron to rear.

Demolish & dispose side wall & rear wall & install zinc fencing 1500 high with 1 gate.

Remove roofing over laundry area, install battens & fit Sun tuff [translucent roof sheeting] diffused grey.

Manufacture & install pergola roof at rear 7500 x 4800 with rafters, hangers, beams, battens & Sun tuff diffused grey. Fitted to existing posts.

...

Total price \$ (exc GST)      \$4,050.00

GST \$405.00

Total price \$ (Inc GST) \$4,455.00

7 Mr Dodd said that the original quotation was too expensive for Ms Stand and that Revive issued another. It is identical to the first (including the date) except that the size of the pergola is given as 5000 x 4000 and the total price was \$3,100 exclusive of GST, and \$3,410 inclusive of GST. Ms Stand's evidence is that she did not receive the second quotation.

8 No drawing was provided to show where the pergola was to be placed and its dimensions.

9 The parties agree that Revive issued a tax invoice on 8 March 2017, the relevant parts of which are as follows:

Works as quoted	\$3,800.00
Deposit	\$2,000.00

There follows in handwriting:

Balance	\$1,800. -
New gal post	\$200. -
Balance	\$2,000. -

And printed:

Subtotal	\$2,000.00
GST [no entry]	
Total (inc GST)	\$0.00
Balance Due	\$2,000.00

10 I asked both parties about the discrepancy between the amount (or amounts) quoted and the amount paid. Both parties agree that \$4,000.00 was paid under the contract before the variation or new contract, of which more is said below.

11 Ms Stand's evidence was that when she received the quotation for \$4,455 she asked Mr Dodd if it could be lowered and he said "\$3,800 for cash". Mr Dodd's evidence was that the additional \$590 was for new posts for the pergola and labour to install them.

12 I prefer Ms Stand's evidence because, although it ill-behoves either party to obtain or enable tax avoidance, the documentary evidence supports her version rather than Mr Dodd's. The invoice of 8 March 2017 shows \$200 for "new gal[vanised iron] post" not \$590. Nevertheless I note that the deduction was not just the amount otherwise payable for GST, but a further \$250.

13 It follows that the pergola should have been 7500 x 4800mm, a total of 36m<sup>2</sup>, not 5000 x 4000mm, a total of 20 m<sup>2</sup>.

### Variation or separate contract?

- 14 The parties agree that Ms Stand paid a further \$960 for water tank works, electrical work and plumbing. Ms Stand said that the contract was with Revive; Mr Dodd said it was with himself “Matthew” and “Jordan”.
- 15 I prefer Ms Stand’s evidence, based on the hand-written attachment 3 to Ms Stand’s Points of Claim, which appears to be signed and initialled twice by Mr Dodds. It is as follows:

Left side = new suspended down pipe front + back to tank.

Remove +excavate existing tank.

Fit external power and reconnect shed.

Fit pump from tank to house.

Fit make shift down pipe to right side front to allow flow to driveway.

\$960 [marked “paid in full” and signed twice by Mr Dodd]

Original	\$4,000
Paid	\$2000
Bal	\$2000
New work	\$960
Balance	\$2960
Paid	\$1000
Bal	\$1960

The figures had vertical parallel lines through them marked “Paid” and initialled twice by Mr Dodd.

- 16 The summary of the amounts paid and payable is not consistent with a contract with anyone other than Revive.

### Items claimed

- 17 All the items claimed by Ms Stand relate to the plumbing and electrical work. Mr Dodd is neither a plumber nor an electrician and Ms Stand said she “didn’t think Mr Dodd or his people were plumbers or electricians”. Ms Stand said that Mr Dodd insisted on doing the work. I am not satisfied that this was a sufficient reason to allow him to do so, particularly as she was shortly to sell the property. As she said in evidence “I had to pay to have the work repaired to stop the buyers from being electrocuted.”
- 18 Ms Stand claims both the amount she paid for this work, and the amounts paid to licenced plumbers and electricians to rectify the work.
- 19 The amounts claimed by Ms Stand are:
- Paid to Think Water \$66.00
  - Paid to Revive for electrical and plumbing \$960.00

- For plumbing rectification \$1,200.00
- For electrical rectification \$849.85

### Refund

- 20 For the reasons given below under “Repaired items” I find that the work was not undertaken competently and given that it involved plumbing and electrical work should not have been undertaken by Revive as was known, or should have been known, by both parties.
- 21 I find that Revive must refund the amount paid to it of \$960.

### Repaired items

#### Think Water

- 22 I accept Ms Stand’s evidence that she paid \$66.00 to Think Water for a minor repair to the pump placed in her tank by Mr Dodd or someone else on behalf of Revive. I do not accept Mr Dodd’s evidence that Ms Stand opened the box containing the pump and “fiddled with it”. Even if she did that, Mr Dodd should have established that the pump was correctly assembled before installing it.
- 23 I find that the need to repair the pump is compensated by the refund. There is no further allowance.

#### Plumbing rectification

- 24 I accept Ms Stand’s evidence that the hot water pipe from the house to the laundry was left unsupported and that the stormwater along the side of the house was insufficiently supported. I accept that she paid \$1,210 to a plumber to undertake this work.

#### Electrical rectification

- 25 I accept Ms Stand’s evidence that there were numerous defects in the electrical work left by Revive, and that she paid an electrician \$849.85 for their rectification.

#### Work necessitated by insufficient size of pergola?

- 26 Ms Stand submitted that if the pergola had been built to the size she contracted for, no further plumbing or electrical work would have been necessary.
- 27 She provided no evidence from the repairing plumber or electrician to support this view and I note that although both items might have been better supported had the area been roofed, old materials have been replaced with new, some additional items have apparently been added and the absence of the demolished wall would make both these elements less well protected than they were before the wall was demolished.

### Conclusion regarding rectification

- 28 I am not satisfied that the alleged failure to build the pergola to the contracted size entitles Ms Stand to refund of the plumber's and electrician's accounts, particularly as she knew she was not engaging a plumber or electrician.

### Size of the pergola

- 29 I accept Ms Stand's evidence that the pergola as built was 5000 x 4000mm. I also note that Mr Dodd indicated the work had been constructed in accordance with the second quotation, which called for a pergola of only 20 m<sup>2</sup>.
- 30 On the basis of the two quotations of 3 March 2017, it follows that Revive attributed \$950, the difference between \$4,050 and \$3,100, to the smaller pergola. However this amount must be adjusted to take into account the cheaper price negotiated for cash.
- 31 Based on Ms Stand's evidence, the saving of \$950 represents approximately 24% of the original price. I reduce the sum of \$950 by 24%, being approximately \$228, to \$722.
- 32 Revive must pay Ms Stand \$722 for the smaller pergola.

### Conclusion

- 33 Revive must pay Ms Stand \$960 to refund the amount paid by her for plumbing and electrical work and \$722 as compensation for getting a smaller pergola than she paid for. It must pay the total of \$1,682 forthwith.

M. Lothian  
**Senior Member**