

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT Reference: D497/2009

APPLICANT: Nadia Vanas, Peter Vanas

FIRST RESPONDENT: Ezy Clad Pty Ltd (ACN 115 523 227),

SECOND RESPONDENT: Con Anastasiadis t/as Render World

WHERE HELD: Melbourne

BEFORE: Senior Member R. Walker

HEARING TYPE: Small Claim Hearing

DATE OF HEARING: 11 September 2009 and 15 October 2009

DATE OF ORDER: 15 October 2009

CITATION: Vanas v Ezy Clad Pty Ltd & Anor (Domestic Building)
[2009] VCAT 2228

ORDERS

Order the First Respondent to pay to the Applicants \$8,756.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicants: In person

For the First Respondent: On 11 September 2009, Miss Davis of Counsel. On 15 October 2009, no appearance.

For the Second Respondent: No appearance

REASONS

Background

1. The Applicants are the owners of a house at 2 Lily Street, Bentleigh that they have recently renovated and extended into a two-storey structure. The upper part of the house is clad in polystyrene foam panels and the whole of the exterior of the house has been rendered over.

2. The Applicants engaged the First Respondent Ezy Clad Pty Ltd (“Ezy Clad”) to fit the polystyrene panels and render the house in or about August last year.
3. Upon completion of the work, the Applicants complained of the following defects:
 - (a) The walls are not straight;
 - (b) There are high points on the walls which cast shadows, creating a patchy appearance;
 - (c) Some of the corners and seals where they have been used as corners of the panels show signs of rusting.
4. In this proceeding, the Owners seek damages of \$10,000 with respect to the rectification of these defects.

The hearing

5. The matter came before me as a Small Claim on 11 September 2009. The Applicants appeared in person and Ezy Clad appeared by its Counsel, Miss Davis. There was no appearance of the Second Respondent. Miss Davis stated that she had only recently been instructed and she was not in a position to proceed. After hearing from the parties, I adjourned the proceeding to an on-site hearing before me on 15 October 2009.
6. Ezy Clad did not attend the on-site hearing. I was informed by the first Applicant, Mrs Vanas, that someone had telephoned her that morning to say that the representatives of Ezy Clad were running 15 minutes late. After delaying the start of the hearing for half an hour, no one had arrived and so I proceeded with the hearing and carried out an inspection of the rendering work. Again, there was no appearance of the Second Respondent but no evidence was led concerning him.
7. I found two instances where rust was showing through the final coat, indicating that the metal corners used by Ezy Clad had rusted and the rust stains had bled through the render. I also noticed a patchy and uneven surface at the upper level on both sides of the building. The substrate for the render at this level was the foam panelling supplied and fixed by Ezy Clad.
8. The Applicants provided me with a report dated 14 October 2009 from another renderer, Mr Shane Walters. In his report, Mr Walters makes the following observations:
 - (a) As to the straightness of the walls, he said that they were up to 100 mm out, which he said was because the frame had not been constructed true and straight. He said that it was not an issue that a renderer could fix by applying more render. I agree with that observation;
 - (b) As to the patchy appearance, he said that it was where the polystyrene sheets had been joined. He said that the pre-coated sheets had no rebates so the mesh and the render that were applied to the joins after installation would sit proud of the baseboards. He added that the render material

used in the joints is often of a different material than the base coat used with different absorption rates and that, after becoming wet, it will dry at different rates. He said that the solution to the problem was to re-render the wall with a high build-up render paying particular attention to the areas between joints to ensure a surface as flat as possible. This is a plausible explanation of what I observed and I accept his evidence.

- (c) In regard to the external angles Mr Walters said that low quality stainless or galvanised angles are commonly used in the industry and they rust. He said that the answer was to treat them with a rust-kill product and then paint them with a membrane to avoid any further moisture penetration. He said that he only uses aluminium external angles, presumably in order to avoid this sort of problem. Again, I accept his evidence.

Findings

- 8. I find that the uneven surface is due to a combination of two causes, namely, the failure of Ezi Clad to attach the foam panels so as to obtain a level substrate before rendering or, after having attached them in the manner in which they have been attached, failing to render the wall with a high enough build-up of render to ensure a reasonably flat surface. The thin render has also resulted in uneven colour when the render becomes wet.
- 9. I also find that the metal angles used were deficient in that they have rusted and the rust stains have bled through the render. In both cases I find that this is defective workmanship.

Damages

- 10. The Applicants have tendered a quotation from Mr Walter's company to rectify the defective workmanship for a total of \$8,756. Since the items set out in the quotation do not include any straightening of the frame, it would seem that this is to simply rectify the defective workmanship of Ezy Clad.
- 11. I find case proved against the First Respondent and order the First Respondent to pay to the Applicants \$8,756. I make no order concerning the Second Respondent.

R. WALKER

Senior Member