

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. D673/2013

CATCHWORDS

Domestic building – order for rectification by Respondent – leave reserved for Applicants to apply for further orders if work not done – some work done but order not complied with – damages awarded

APPLICANTS	Ms Mary Verras, Mr Arthur Verras
RESPONDENT	En Vogue Developments Pty Ltd (ACN: 086 352 034)
WHERE HELD	On site at 2/268 Belmore Road, Balwyn
BEFORE	Senior Member R. Walker
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	31 October 2014
DATE OF ORDER	2 December 2014
CITATION	Verras v En Vogue Developments Pty Ltd (Building and Property) [2014] VCAT 1514

ORDER

Order the Respondent to pay to the Applicant \$4,290.00.

SENIOR MEMBER R. WALKER

APPEARANCES:

For the Applicants	Ms M. Verras in person
For the Respondent	Mr Theobald, Director

REASONS

Background

- 1 On 15 October 2013 the Tribunal ordered the Respondent to carry out remedial work at the Applicants' premises to rectify Items 3, 4, 5 and 6 of a Building Commission report that was referred to in the order. The work was to be commenced on Tuesday 29 October 2013 and was to be completed within seven working days of commencement, subject to the weather.
- 2 Leave was reserved to the Applicants to renew the proceeding if the Respondent should fail to complete the remedial work to a proper and workmanlike standard. If renewed, they were to file and serve a quotation for costing for repair work.
- 3 The matter has since returned to the Tribunal with the Applicants alleging that none of the items have been completed.

Further hearing

- 4 After some adjournments, the matter was listed for hearing before me on site on 31 October 2014. The First Applicant was present in person and the Respondent was represented by its Director, Mr Theobald. I reminded each of the representatives that they had already been sworn and were still under oath. I then proceeded to inspect the items complained of by the Applicants and heard what the two witnesses had to say about each of them.
- 5 At the conclusion of the proceeding I informed the parties that a short written decision would be sent to them by mail. My findings as to the three items are as follows.

Item 3 exterior render cracking

- 6 This related principally to the rendered retaining walls next to the driveway. They were constructed of core-filled block work. There were cracks in the walls and also the mortar beds and perpends of the block work were visible beneath the rendering in some places.
- 7 Some attempt appears to have been made to rectify the problem of the cracking and Mr Theobald said that his renderer had re-rendered the walls. It did not look to me as though there had been a complete re-render of the walls. Rather, they appeared to have been repaired and given a thin coat of some matching material. The cracks are still present and are quite unsightly. The mortar beds and perpends of the block work are also still visible
- 8 Mr Theobald produced a report he had obtained from his engineer to the effect that the wall on the eastern side of the driveway had not been built by the Respondent the way it had been designed. The Respondent had built it with a slope down towards the street whereas the engineer had designed it to step down in several horizontal stages towards the street. Upon inspection it did not appear that this would have made a great deal of difference because the soil behind the wall was not banked up to the full

height of the wall. In fact, it was generally a considerable distance below the top of the wall. It is questionable whether any more soil has been retained by this wall than would have been retained had it been built as designed. In any case, it was the Respondent that built the wall and if the present situation has arisen because it did not follow the engineer's design, that is the fault of the Respondent.

- 9 Whatever the cause of the problems, the Respondent was responsible and was ordered to rectify the walls. I find that the order has not been complied with.

Item 4: Mouldings to walls are loose and have large gaps

- 10 I saw many instances of cracking and de-lamination of moulding, particularly around the window at the front. Mr Theobald said that he had used a proprietary rendering system known as Unitex and had used the correct adhesive. Nevertheless, the mouldings have come loose and must be re-attached. The order was to repair and make good the mouldings and that has not been done. Again, the order has not been complied with.

Item 5 – Skirtings cracks between joints and walls

- 11 The builder was to fix the mouldings and other fixtures insofar as they exceeded 1mm in width and make good. I saw a number of joints that exceeded 1mm. These were in the hallway on the upper level and in the room leading off the hallway where the skirting board also appeared to have come away from the wall. I saw no evidence of any attempt to fix these so I am satisfied that that part of the order has not been complied with.

Item 6 – Study and balcony French doors

- 12 The inspector, Mr Kosa, said that these doors were required to be sealed as a requirement of the energy rating and that they were not sealed. The order was to provide sealing in accordance with the energy rating and gaps not exceeding 5mm. The First Applicant showed me the two French doors. At the bottom of the one on the eastern side there was a gap well over 5mm and, in the case of both doors, the window furnishings noticeably moved in and out with the very gentle breeze that was blowing from outside on that day. In each case I put my hand to the gap between the two doors and I could feel the wind coming in. It is apparent to me that the order has not been complied with.

Cost of rectification

- 13 The Applicants have provided two quotations, one from a renderer for \$3,850. It is apparent from looking at this that this includes not only the render but also the mouldings and to work inside. The quotation appears to be relatively modest for the scope of works and that will be allowed.
- 14 She also produced a quotation from a builder to weather-seal all external doors, readjust door margins and re-seal sticking doors. The amount was

\$660 but I will reduce that slightly because there was nothing in the order about sticking doors. I will allow \$440.

Order

- 15 There will be an order that the Respondent pay to the Applicants \$4,290 with respect to the Respondent's non compliance with the Tribunal's order of 15 October 2013.

SENIOR MEMBER R. WALKER