

IN THE WEATHERTIGHT HOMES TRIBUNAL

**TRI-2009-100-000080
[2010] NZWHT AUCKLAND 2**

BETWEEN

KEVIN GOWER
Claimant

AND

KPH CONSTRUCTION
LIMITED
First Respondent

Hearing: 17 February 2010

Appearances: Claimant in person
C Patterson, for the first respondent

Decision: 25 February 2010

FINAL DETERMINATION
Adjudicator: P J Andrew

INTRODUCTION

[1] The claimant, Mr Gower, owns a house on the Kari Kari Peninsula in Northland. The roof of the house has been leaking resulting in damage to parts of the ceiling. The house was constructed in 2001 by the respondent, KPH Construction Limited.

[2] Mr Gower contends that KPH was negligent in the construction of the roof and is liable for the cost of repairs to prevent further leaks. A total sum of \$7,358.37 is claimed against KPH.

[3] The critical issue for the Tribunal to determine is whether the claimant has established that KPH was negligent in the manner alleged and has caused the roof to leak.

[4] This is a lower-value claim as defined by section 8 of the Weathertight Homes Resolution Services Act 2006. Under section 59 of that Act, the Tribunal must determine such claim on the papers without an oral hearing unless it is appropriate to do so otherwise. In this case, a short oral hearing was held by telephone with both parties and the assessor, focusing on the critical issue of whether the leaks to the roof were caused by faulty workmanship on behalf of KPH.

BACKGROUND

[5] Mr Gower and KPH entered into a building contract dated 16 January 2001 to erect the house. The house is situated on a high hill and very exposed to the elements, particularly high winds. The parties clearly anticipated that Mr Gower, who has some building expertise, would play some role in the construction. However, there was and remains disagreement as to the exact nature of that role and Mr Gower's relevant responsibilities.

[6] Since 2001 there have been concerns expressed to KPH by Mr Gower on a number of occasions about allegedly faulty construction. KPH returned to the site on two occasions in 2001 to remedy some of the concerns raised. The further work carried out by KPH did not relate to the roof.

[7] According to Mr Gower, concerns were raised by him about the quality of the roof construction at the time the roof was installed. Mr Gower says that at the time he complained to KPH that the ridges overlap on the roofing cladding was insufficient; they should have been 2.5mm instead of 1.5mm as installed, Mr Gower was told by KPH that they would only install 1.5mm overlaps.

[8] Mr Gower further says that during the installation of the purlins, he complained to the KPH builder that there were knots in the purlins and that these should have been cut out or sawn off so as to prevent nails pulling out when the knots split open. Again, however, the complaints are said to have been rejected.

[9] In October 2003 Mr Gower wrote to KPH again asking for remedial works to be carried out to remedy some defects in construction. Mr Gower alleged, at that time that the roof fascia board had pulled away from the rusticated Hardy plank weatherboards and that there were active rust areas on some of the roof's pre-coated corrugated iron sheeting surfaces. In its reply, dated 13 October 2003, KPH denied responsibility for any of the defects alleged and suggested that any problems with the roof were the responsibility of Mr Gower as the labourer on site when he had worked together with KPH.

[10] In 2004-2005 there was a serious leak to the roof during a storm with gale force winds. This resulted in water coming through the ceiling in the lounge. Later in 2005 Mr Gower filed a claim with WHRS.

[11] The assessor, Mr Philip Brown, has produced two reports; the first dated 13 October 2005, and an addendum report dated 13 March 2008. The addendum report identified a further leak to the roof during a storm in 2007. Again water had dripped through into the ceilings.

THE CLAIM AND THE EVIDENCE

[12] Mr Gower contends that the workmanship of KPH in relation to the roof, was faulty in the following principal respects:

- a) Using poor quality purlins, which were wet and heavy at the time of installation and contained knots. This is said to have led to the nails lifting and allowing water to penetrate into the ceiling.
- b) The ridge overlaps were of insufficient length, particularly for a high wind zone. They were 1.5mm and should have been 2.5mm.
- c) Poor quality nailing of the roofs. Some of the nails missed the purlins with the result that the roof cladding has lifted, allowing water to penetrate.
- d) The rivets were too long resulting in rust spots.
- e) Failure to install back-tray flashing for the change of pitch. This would have prevented the corrugated cladding from abrading the iron with the edge of the sharp end of the higher pitched sheets.

[13] In support of these contentions, Mr Gower has produced a number of written submissions, photographs and a quote from Top Roofing Limited, a Kaitaia company which inspected the roof on 12 October 2009. The quote notes:

“Roof has been poorly installed, noticeable scratches have been touched up with paint, barge flashings do not cover adequately to one end of building. The roof underlay does not have the 20mm minimum overhang and to spouting. The nails are lifting due to purlins being too wet at time of

installation. There is no change of pitch flashings between roof and veranda.”

“A full re-roof is required and sets out the minimum steps required to remedy some of the faults.”

[14] The respondent, KPH, denies that it has been negligent in any way. It returned to the site on a number of occasions following construction to attend to problems that Mr Gower had raised. KPH had no knowledge of the roof leaking until 2009 when it received notice of the claim. KPH also filed a letter from Far North Roofing Limited, which had visited the property, initially at Mr Gower’s request, in approximately 2004. The letter, dated 25 November 2009, noted that there was a problem with the nails on the roof starting to lift but that this was not an installation fault. The author of the letter (Mr Jonathon Telfer) also noted that the roof was a straightforward one and appeared to have been laid to an acceptable standard at the time.

[15] In his first report dated 13 October 2005, the assessor, Mr Philip Browne, while noting the roof cladding system had failed in a recent storm of gale force winds, concluded that “there were no apparent defects where water may have penetrated the roofing”. His report refers to Mr Gower’s confirmation that the upper ends of the roofing sheets were correctly turned up underneath the ridge capping. Hose testing on the roof by the assessor failed to reproduce any water penetration into the ceiling space. The assessor also noted the building paper appeared to have been installed correctly below the claddings.

[16] The assessor’s report refers to the “one-off nature” of the leak due to specific weather conditions. He further noted that there were some workmanship issues on the roofing identified by the owner

which he, the assessor, considered to fall outside the eligibility criteria of the Weathertight Homes Resolution Services Act 2002.

[17] In his addendum report dated 13 March 2008, Mr Browne noting that Mr Gower had reported a further leak in approximately 2007, referred to the roof in the following way:

“In broad terms, the overall condition of this elevation [the roof] was generally found to be consistent with my original investigation and did not suggest significant further investigation was required.”

[18] Mr Browne went on to note that the ceiling applied by the owner to nail heads on the roof appears to have been effective. He noted the roof cladding was in a reasonable condition with the laps facing away from the prevailing winds. Mr Browne concluded that no future damage to the roof was considered to be likely within the 15 year component life specified by the Building Code.

[19] In neither of the two reports did Mr Browne identify any obvious cause of the roof leaking or suggest that this might have been the result of faulty or negligent construction. Because of this, I decided to hold a short telephone hearing, with the assessor and the parties present (see Procedural Order No.2 dated 10 February 2010).

[20] At the hearing, Mr Browne confirmed that he could not identify any actual defects in the construction of the roof or the causes of the leaks. He noted that wet purlins may have been an issue but he had not seen any evidence of this. Mr Browne was also of the view that the length of the ridge laps could not be linked with the roof leaking. When asked to comment about the points raised in the quote from Toproofer dated 12 October 2009, Mr Browne was of the view that none of the matters described had caused the roof to leak. Mr Browne was of the view that the lack of barge flashings was irrelevant.

[21] In essence, Mr Browne confirmed his view that he could not attribute the causes of the leaks to faulty workmanship in construction.

ISSUE – KPH NEGLIGENCE

[22] In my view, Mr Gower has failed to establish that the roof has been leaking because of faulty workmanship by KPH. For this reason, the claim against KPH must be dismissed.

[23] There is no dispute that the roof has leaked, on at least two separate occasions when there were gale force winds. However, the fundamental difficulty Mr Gower faces is that the evidence of the independent expert witness of the Tribunal, namely the assessor, Mr Browne, does not support his allegation of negligence.

[24] The scheme of both the Weathertight Homes Resolution Services Act 2006 and the earlier legislation namely the Weathertight Homes Resolution Services Act 2002 is that the assessor's report, particularly for low-value claims, should generally provide the principal evidential basis for the claim (i.e in simple terms, evidence that the building at issue is leaking and that this has been caused by some defect in construction and/or design). This does not mean that the Tribunal will accept an assessor's report uncritically, but generally the views of the assessor, the Tribunal's own witness, are entitled to great weight.

[25] Mr Gower has raised a large number of concerns about the roof, but Mr Browne could not say whether any of them, or any combination of them, has caused the leaks. Mr Browne was also of the view that no future damage is considered likely within the component life specified with the Building Code. Mr Browne also rejected the statement made about faulty construction by Toproofing,

Kaitaia. That statement was the only evidence that might qualify as independent expert evidence, to support Mr Gower's claim of faulty construction by KPH.

[26] I accept that wet purlins might have been an issue, but there is insufficient evidence to conclude that this has caused the roof to leak and/or was the responsibility of KPH. I note that Mr Gower, who was physically present at the time of construction, and seems to have taken a very keen interest in the process, says that he passed the purlin material to the builder to cut and lay in place and also held the purlins to keep them in place while the builder nailed them in to secure them (submission received 10 November 2009). The evidence falls short of establishing that KPH was negligent.

RESULT

[27] The claim by Mr Gower against KPH is dismissed.

DATED this 25th day of February 2010



P J Andrew
Tribunal Member