

**BETWEEN**

**AFY**

APPLICANT

**AND**

**AFX**

SECOND APPLICANT

**AND**

**ZVX**

RESPONDENT

**AND**

**ZVW**

SECOND RESPONDENT

Date of Order:

25 June 2013

Referee:

Referee Dryden

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZVX and ZVW are to pay AFY and AFZ \$7,357.50.**

**Payment is to be made directly between the parties by 12 July 2013.**

## **Facts**

[1] ZVX and ZVW painted the exterior of AFY and AFZ's house in 2008 at a cost of \$7,357.50, inclusive of GST. Workmanship concerns were raised with ZVX and ZVW about paint bubbles appearing on the side of the house that faced the sun. ZVX and ZVW partially completed some remedial work by sanding the affected areas and applying an undercoat. Since that time, the paint work has deteriorated further. AFY and AFZ are seeking compensation for the cost of repainting the house. The issues were decided on the evidence and law, including the Consumer Guarantees Act 1993.

## **Issues**

[2] The issues to be decided in this claim are:

- (i) What was the cause of the deteriorating paint finish that is visible on the house?
- (ii) If it is the fault of ZVX and ZVW, what remedy is available to AFY and AFZ?

## **Decision**

*What was the cause of the deteriorating paint finish that is visible on the house?*

[3] The relevant law is the Consumer Guarantees Act 1993. The Consumer Guarantees Act 1993 provides guarantees for consumers that the service provided will be carried out with reasonable care and skill. The product resulting from that service will be reasonably fit for its particular purpose, and is of such a nature and quality that it can be reasonably expected to achieve a particular result.

[4] Each party agreed that the current paint finish on the house is unsatisfactory. The paint on the house is peeling off and is blistering. The cause of the problem is disputed by each party.

[5] AFY and AFZ have relied on the report of Mr HL, an experienced Master Painter. Mr HL inspected the house and in his report commented on the cause of the problem, which he found to be workmanship problems. Mr HL concluded that the cause of the blistering of the paint was incorrect preparation when changing from an oil-based gloss to an acrylic (water-based) system. Mr HL also found that where bare wood was exposed an incorrect primer had been used.

[6] ZVW denied that an incorrect primer was used and claimed that they sought advice from a paint representative as to what primer and undercoat should be used. ZVW claimed that the exterior matai timber is the problem, as it is an oily wood and the oils will leach out of the timber. This was agreed by Mr HL, who stated in his report that oils will leach out of the timber many years later when exposed to sunlight.

[7] ZVX and ZVW were aware of the oil problem with the matai timber and therefore, in exercising reasonable care and skill, should have addressed that problem by preparing the timber appropriately for the final paint finish.

[8] I am satisfied that there was an appropriate preparatory paint to address the oil leaching problem of matai timber. I am satisfied that the preparation as recommended by Mr HL (of the use of Timberlock as the first coat, followed by Resene Quick Dry as the second coat, and then followed by two acrylic top coats) would have prevented the present early deterioration of the paint finish.

[9] I am satisfied that AFY and AFZ were entitled to rely on the expertise of ZVX and ZVW. It was reasonable for AFY and AFZ to expect that the problem with the matai timber, known to ZVX and ZVW, would be addressed by ZVX and ZVW. Unfortunately, this did not occur and the early deterioration of the paint finish has occurred and is continuing to occur.

[10] ZVX and ZVW claimed that a contributing factor to the paint finish problem has been the alleged failure by AFY and AFZ to wash down the house at least twice a year. AFY and AFZ stated they had the house washed down from time to time. When Mr HL was asked

whether environmental factors would have caused the problem of the present unsatisfactory paint finish, he stated that the sole cause of the problem was unsatisfactory workmanship and not any environmental factor.

[11] I find that the cause of the present unsatisfactory paint finish on the house was a workmanship problem – that problem being the failure to use the appropriate primer when painting matai timber weather boards.

[12] Therefore, I find that ZVX and ZVW have breached ss 28 and 29 of the Consumer Guarantees Act 1993. ZVX and ZVW failed to carry out the painting of the house with reasonable care and skill, which resulted in the paint finish not being fit for its particular purpose (that purpose being that the house would not need repainting for at least ten years).

*If it is the fault of ZVX and ZVW, what remedy is available to AFY and AFZ?*

[13] Pursuant to s 32 of the Consumer Guarantees Act 1993, I am satisfied that the unsatisfactory workmanship was a substantial failure as defined by the Consumer Guarantees Act 1993. All of the paint finish on the exterior walls of the house is unsatisfactory, with blistering giving the same appearance as the patchwork effect found on a crocodile's skin.

[14] Therefore, the remedies available are the payment of damages for the reduction in value of the product of the service provided, and damages for any loss resulting from the failure that was reasonably foreseeable.

[15] I am satisfied that AFY and AFZ's house will have to be completely repainted and that this has occurred probably six years ahead of what they might have reasonably expected. The cost of repainting the house now is \$14,770.00 plus GST.

[16] On the merits of the situation after considering the matters of depreciation, I am satisfied that the preparation work was always going to fail. In this circumstance, it would be unfair to consider the matter of depreciation in calculating the damages payable (depreciation being the time before the paint finish failed). That time frame is uncertain and there has been

evidence that some of the paint finish was unsatisfactory upon completion of the painting contract back in 2008.

[17] AFY and AFZ have filed a claim for \$7,357.50, being the original cost of the painting contract. I am satisfied that this sum should be refunded in full. This sum is approximately 50% of the cost of repainting the house. It can be argued that this sum accounts for the five years of the limited benefit AFY and AFZ received from the painting of the house by ZVX and ZVW.