

BETWEEN

**HK and KP
APPLICANTS**

AND

**RPP Ltd
RESPONDENT**

Date of Order:

9 May 2018

Referee:

Referee: J Costigan

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that RPP Ltd is to pay HK and KP \$15,000 on or before 30 May 2018.

Facts

[1] Mr HK and Mrs KP live in a home they built at XX Y Street. RPP Ltd (RPP) installed Alucobond panels as cladding to the home during its construction. Mr HK and Mrs KP say that the sealant between the panels has failed and requires replacement. Although MR HK and Mrs KP say it will cost more than \$22,000 to replace the sealant in the panels, to stay within the financial limit of the Tribunal's jurisdiction they have limited their claim to \$15,000.

[2] RPP LTD did not attend the continued hearing of this matter. In making my decision I have considered the points made for RPP LTD at the original hearing.

Issues

[3] The issues I need to decide are:

- a. Has RPP LTD breached any obligation in relation to the performance of the cladding?
- b. If so, has that caused the loss claimed?
- c. If it has, will it cost at least \$15,000 to remedy?

Has RPP LTD breached any obligation in relation to the performance of the cladding?

[4] I am satisfied that all work undertaken by RPP LTD for Mr HK and Mrs KP needed to comply with the conditions of the contract between the parties at that time, including those terms implied by the Building Act 2004 and the Consumer Guarantees Act 1993. I find the implied warranties under section 397 of the Building Act at that time as referred to by Mr HK and Mrs KP applied to RPP LTD's work and the work needed to comply with the building code.

[5] Although Mr KR for RPP LTD suggested only a five year durability requirement applied under the building code and that Alucobond is more of a 'rain screen system', I consider this was more probably 15 years as required for cladding. The Alucobond manual itself provided notes the system has objectives as to remaining an effective cladding and resisting penetration by moisture.

[6] In the plans, the sealant specified to be used was "Silka 20 AT". The Alucobond manual states installers are to follow design specifications and that "...an appropriately tested

sealant like Sika AT Façade must be used". I consider the plan reference will most probably be to the Sika AT.

[7] I am satisfied that the sealant applied by RPP LTD to the cladding has failed. Mr KR has explained that the installation was as specified and has suggested that pollution or environmental conditions (including sun or smoke residue) may be responsible given localised areas where the failure is more evident.

[8] I accept MR HK and Mrs KP's evidence they have regularly maintained the exterior of the house. The photographs I have seen show the house as obviously well maintained.

[9] Whilst I understand that pollution or environmental factors can play a part in the degradation of a sealant, I do not consider that is the most probable reason the sealant at XX Y Street has failed. I say this because I am satisfied the sealant used was not the sealant specified but another sealant, Bostik MS Safe Seal.

[10] Although Mr KR said that compatibility testing had been undertaken for the use of the Bostik product, there has been no evidence (such as test reports) of that testing being undertaken and the chief chemist from Bostik, Ms PH, expressly stated that Bostik has not tested any products with Alucobond.

[11] This is important as it is clear from the Alucobond information provided, and Bostik's earlier correspondence, that compatibility testing is required before use.

[12] I consider the most probable failure for the sealant is an incompatibility of the Bostik product used with the panels and this was in breach of RPP LTD's obligations to Mr HK and Mrs KP as it was in breach of the implied warranties under the Building Act 2004. In particular as to RPP LTDs requirements to carry out work in accordance with specifications, provide suitable materials and in accordance with all legal requirements, which included the building code.

If so, has that caused the loss claimed?

[13] I am satisfied the loss claimed relates to remedial work to remove and replace the failed sealant and has been caused by RPP LTD's breach.

If it has, will it cost at least \$15,000 to remedy?

[14] RPP LTD considers remediation could be undertaken at a lesser cost and has provided a quote for \$9,824 plus GST.

[15] However, RPP LTD has not agreed to undertake the work and so I consider the quotes provided by DHD Ltd to give better evidence of the cost to undertake the remedial work required. I also accept additional costs over and above those quoted for will need to be met. Given the DHD quote itself is well in excess of the \$15,000 claimed I find the remedial costs I can award are \$15,000 as ordered above. Mr HK and Mrs KP will be required to meet any additional costs themselves given they have submitted to the Tribunal's jurisdiction.