

BETWEEN

EQ
APPLICANT

AND

EQQ
SECOND APPLICANT

AND

UJ LTD
RESPONDENT

AND

UJU
SECOND RESPONDENT

Date of Order:

17 August 2016

Referee:

Referee Whineray

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] In June 2014, Mr EQ and Mrs EQQ purchased the house at XX Street Christchurch. By December 2015, the paint work had deteriorated on some parts of the house and Mr EQ had it repainted. Mr EQ and Mrs EQQ are now seeking to recover the cost of repainting the house from UJ Ltd who carried out the painting for the original vendor before it was sold.

Issues

[2] The issue to be determined is whether Mr EQ and Mrs EQQ are entitled to recover the cost of remedial paint work from UJ Ltd or UJU.

Are Mr EQ and Mrs EQQ entitled to recover the cost of repainting their house?

[3] In a negligence claim, four elements must be proven. These are: (i) the existence of a duty of care; (ii) breach of that duty; (iii) causation; and (iv) monetary loss. A duty of care arises when parties are in close proximity to each other and it is reasonably foreseeable that if a standard of reasonable care while doing something is not adhered to then someone else could foreseeably be harmed.

[4] Mr EQ gave evidence at the hearing. He said that they bought the house at auction in June 2014 after it had undergone earthquake repairs. Prior to the purchase, Mr EQ was given a letter from Artisan Homes which said that all the work, which included the exterior painting, had been done to a high standard. Mr EQ said that he also had an engineer friend, Mr A inspect the house before it was purchased. Mr A and Mr EQ noticed that the paint had bubbled in some places on the old part of the house but they did not regard it as significant. Photos of the house taken at this time were produced at the hearing.

[5] Mr EQ said that two years after they bought the house, the paint work had deteriorated badly on the older part of the house. It had blistered and cracked and the joins between the weatherboards had become obvious. In his mind, the paint work was defective as it should have lasted a minimum of five years from the time it was done. In support of his claim, Mr EQ pointed to a section of the Building Code which provided that paint systems such as the one used on his house should last a minimum of five years.

[6] Mr B was contracted to repaint the house and he gave evidence at the hearing. He confirmed what he wrote in the quote dated 3 December 2015 that the paint was in poor condition. The likely cause of this was the delamination of the old paint which had not been removed prior to painting by WBM. The weatherboards had also shifted, though this could have been due to the dark colour of the paint which would have been affected by temperatures. Mr B said that there was no evidence that UJ Ltd had applied the paint incorrectly or badly. To ensure that the job lasted longer, it would have been prudent to strip the paint back to the weatherboards.

[7] Mr UJU, the director of UJ Ltd, denied that he was liable to Mr EQ. In his view, he had done the job exactly as agreed with the previous owner who did not want him to strip back the house entirely. Mr UJU said that he recommended stripping all the old paint off but because this added to the cost of the job, the owner only wanted the minimum necessary to be done.

[8] Before considering whether UJ Ltd's work was defective, it is necessary to establish whether UJ Ltd owed a duty of care to Mr. EQ and Mrs. EQQ.

[9] Mr EQ made detailed legal submissions in support of his claim. In his view, even though he was a subsequent owner of the house, UJ Ltd owed him a duty of care to do the job properly. He pointed to a number of cases involving claims against builders and other contractors where their actions had resulted in defective buildings. These cases established that contractors such as builders and other contractors owe a duty of care to future homeowners to use good workmanship and not act negligently. Mr EQ submitted that a contractor cannot avoid a negligence claim simply by saying he had complied with the terms of the contract. All contractors owe a duty to use reasonable care to the person they can directly foresee will be affected by their work.

[10] I do not accept Mr EQ's arguments and for the following reasons I find that UJ Ltd did not owe a duty of care to Mr EQ or to any other subsequent owner of the house:

- a) Mr EQ likened his claim to the leaky building claims. However, these claims relate solely to defective buildings and seldom, if ever, involve painters. Furthermore, claims determined by the Weathertight Homes Tribunal are restricted to the jurisdiction set out in the Weathertight Homes Resolution Services Act 2006 and as such are limited in scope.

- b) The relevant building legislation weighs against there being sufficient proximity to justify a duty of care between a painter and subsequent homeowners. A duty here would not follow existing statutory duties since painters who do not perform building work, are not subject to the obligations under the Building Act. A new obligation would override contract without the support of statute. Paint systems are covered by the Building Code because they are a building component, however there are no prescribed standards relating to the application of the paint. The Building Act only covers building work which means work for, or in connection with, the construction, alteration, demolition or removal of a building.
- c) Imposing a duty would also cut across the Consumer Guarantees Act which struck a balance in relation to when it is appropriate for suppliers of services to owe a duty. Downstream purchasers of goods are able to rely on the quality guarantees set out in the Act, but the same does not apply to services. Only the original recipient of a service can enforce the guarantees.
- d) In cases decided before the Building Act 2004, the duty of care was extended to contractors in cases where structural work was performed which lead to physical damage and potential harm to people. Plaintiffs were vulnerable in the sense that any inspection for defects could be conducted only by experts. They could not take protective measures themselves. In this case, there is no physical damage or safety concerns and any problems with the paint work are detectable by laypeople and are easily fixable.
- e) Given the nature of paint work, the contract is the place where risk should be allocated between the parties and which should determine proximity. It is up to the home owner to determine how much he or she wishes to spend on the paint job, the colour of paint and how much protection he wishes to give his house. To find that a painter owes an extended duty of care to subsequent homeowners would seriously challenge the current practice of negotiating painting contracts.

Conclusion

[11] I find that Mr EQ has not satisfied the first element of the claim which is that UJ Ltd owes him a duty of care. The claim is therefore dismissed. For this reason, I do not need to determine whether the paint work was defective.