

**BETWEEN**

**FE  
APPLICANT**

**AND**

**TV LTD (TVL)  
RESPONDENT**

Date of Order:

3 August 2016

Referee:

Referee J Perfect

---

**ORDER OF THE DISPUTES TRIBUNAL**

---

**The Tribunal hereby orders that the claim is dismissed.**

**Facts**

Mr and Mrs FE engaged TV Ltd ('TVL') in July 2014 to clean, treat and paint a designer panel fence that had been erected around their property in 2011, due to black mould having appeared on the outside of the wall.

The quoted price which was paid on completion of the job was \$6394.00. Some six months after the fence was painted by TVL, bubbles started to appear on the surface which both TVL's foreman/supervisor and a paint manufacturer representative inspected. A dispute arose as to the cause of the surface bubbling, and Mr XY from TVL recommended two independent people who could further inspect and provide a report to the FEs.

The FEs engaged Mr AB to inspect the problem and write a report on the cause and recommendations for remedying the problem. The report found that TVL's paint job has not caused the problem the FEs have experienced. The FEs do not accept this conclusion, claiming \$12,000.00 for work to remedy the problems.

**The issues to determine are:**

Has TVL failed to meet the Consumer Guarantees Act 1993 guarantee of reasonable care and skill by:

- a) Misapplying new coatings?
- b) Using incorrect products?
- c) Failing to identify any underlying moisture problem?

What is the likely cause of the problem?

What remedy, if any, is available to the FEs?

*Has TVL failed to meet the Consumer Guarantees Act 1993 ('CGA') guarantee of reasonable care and skill by misapplying new coatings?*

I find that TVL has not misapplied the coatings based on their evidence from witnesses, Mr CD from the paint manufacturer, who provided the original coating specification for the job, and inspected the problems six months after the job was completed by TVL, and from Mr AB, who carried out an independent inspection and provided a written report to the FEs.

Both witnesses state that on breaking the blisters on the surface of the fence, it was apparent that the coatings applied by TVL in November 2014 were adhering to the existing painted surfaces and the delamination was occurring at the original substrate. Mr CD showed photographic evidence of this at the hearing.

Mr FE challenged the credibility of Mr AB's findings, and had rejected his report after discovering that he belongs to the same professional association as Mr XY of TVL. Mr AB was called as a witness by TVL, although he had been engaged by the FEs via the Painting Contractors Association and was a credible witness. I also accept that he is an independent witness, despite Mr FE's views about membership of the same organisation as Mr XY, because it is reasonably common for a professional or trade organisation to have a process for independent inspection and/or review of another member's work. TVL was not part of that process and had not seen a copy of Mr AB's findings until these proceedings as Mr AB was engaged by the FEs.

Mr AB's report also refers to the colour choice being a possible contributing factor to the blistering as it has a light reflective value (LVR) on the borderline of acceptability for exterior broad wall application. However, TVL was instructed to paint the wall that colour as that was the colour it was originally painted. I do not find that to be irregular in any way and cannot find on the evidence available that TVL should have declined to use the colour considering it was the original colour of the wall.

*Has TVL failed to meet the CGA guarantee of reasonable care and skill by using incorrect products?*

Mr and Mrs FE state in their original claim that TVL should not have used the XX product as the primer for the negative detail and provided specifications for that product and an alternative XX product. However, Mr CD from XX stated at the hearing that the XX product used is suitable for this type of application. He also noted that in applying product to the area of negative detail, TVL followed usual and acceptable painting procedure in removing existing coating only to the extent that it was unsound. Mr CD pointed out that paint is never intended to prevent cracks, or hold structures together to prevent moisture ingress.

*Has TVL failed to meet the CGA guarantee of reasonable care and skill by failing to identify any underlying moisture problem?*

Given that both Mr CD and Mr AB, as the only third parties to inspect and report on the issues with the FEs' fence, identify moisture ingress leading to the delamination of the original substrate as the cause of the bubbling and blistering on the surface of the wall, the question arose at the hearing as to whether there was a moisture problem with the wall when TVL quoted for the job, and if there was, whether they should have been able to identify it.

The FE's say they had never noticed any leaking from the wall prior to engaging TVL, that the only issue was the black mould which was on the south side of the fence (Mr AB notes this was able to be cleaned off with proper methods so was not indicative of moisture coming from the inside of the fence). TVL says a moisture test, an adhesion test and a lead test were carried out when they quoted the job in July 2014 as a matter of standard practice. The moisture reading at that time was 6% and Mr XY says he has repeated this test recently on the outside of the wall (as he cannot access the FEs' property) and the moisture level is 47%.

Based on all the above, there is no evidence to suggest that there were high levels of moisture in the fence when TV LTD were engaged, that they should have identified and notified to the FEs.

*What is the likely cause of the problem?*

As already stated, Mr CD and Mr AB have both identified the cause of the bubbling as moisture inside the wall causing the original substrate to delaminate. Neither witness could state with any certainty exactly how the moisture was entering the panels, but both mentioned the design of the negative detail and Mr CD and Mr DF, TVL's foreman, speculated about the lack of angle of the capping plates as possible entry points. These are both issues inherent to the design of the wall.

Mr FE's view of the issue is that as they had never previously had any problems with the wall, and the problems have only arisen after TVL painted the wall, then TVL's work must be the cause of the problem. However, the FEs have provided no independent evidence that shows that TVL has caused the problem or that counters the credible reports from third parties with painting experience and knowledge. Those witnesses have consistently concluded that there is nothing that was either done by TVL incorrectly, or that TVL failed to do what they should have, that has either caused or contributed to the problems with the FEs' wall.

*What remedy, if any, is available to the FEs?*

For all the reasons given above, I find that TVL is not liable to the FEs for any remedy and the claim is therefore dismissed.