



Civil and Administrative Tribunal New South Wales

Case Name: Kirkbride v Kostadinovski

Medium Neutral Citation: [2020] NSWCATCD

Hearing Date(s): 6 July 2018, 16 November 2018, 22 February 2019, 30 July 2019 (Final submissions received 13 January 2020)

Date of Orders: 9 July 2020

Date of Decision: 9 July 2020

Jurisdiction: Consumer and Commercial Division

Before: T Simon Principal Member

Decision:

1. Robert Kostadinovski is to pay Jessica Kirkbride, the amount of \$112,138.84 immediately.
2. If the homeowners seek to make a costs application, they are to provide to the Tribunal and the builder, either in person or by post, submissions and documents by 23 July 2020.
3. The respondent is to provide to the Tribunal and applicant, either in person or by post, submissions and documents in reply on costs by 6 August 2020.
4. It is anticipated that costs will be determined on the papers. If either party seeks to be heard in person, they should advise the Registry prior to 6 August 2020 setting out the reasons why and the Tribunal will advise of the outcome in due course.

Catchwords: Home Building, contract, termination, repudiation, damages.

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)

Home Building Act 1989 (NSW)
Home Building Amendment Act 2011 (NSW)
Home Building Amendment Act 2014

Cases Cited: Gregorio v Cheadle [2018] NSWCATAP 118
Honeywood as executrix of the estate of the late
Neville Honeywood v Munnings & Anor [2006] NSWCA
215

Texts Cited:

Category: Principal judgment

Parties: Jessica Kirkbride(applicant)
Robert Kostadinovski (respondent)

Representation: Counsel:
N Allen - for the applicant
N Simpson - for the respondent

Solicitors:
Ziman and Ziman Solicitors- for the applicant
Kells – for respondent

File Number(s): HB 18/09926

Publication Restriction:

REASONS FOR THE DECISION

- 1 The applicant homeowner, Ms Jessica Kirkbride, is a successor in title and seeks compensation for breach of warranties by the respondent builder, Mr Kostadinovski. The homeowner purchased the property on about 25 July 2013 and made this application on 3 March 2017. The homeowner alleges 14 defects and claims a money order in the sum of \$276,155,76.
- 2 The matter had initially come before the Tribunal for final hearing on 29 January 2018 and orders were made in favour of the homeowner. The builder had not appeared at the hearing and subsequently filed a set aside application. The orders made on 29 January 2018 were subsequently set aside on 18 March 2018.

Jurisdiction

- 3 The builder states that the building works were conducted between 25 August 2010 and March 2011 and an occupation certificate was issued on 28 March 2011.
- 4 The applicant is a successor in title and it is not disputed that she is entitled to the benefit of the statutory warranties as contained in section 18D of the *Home Building Act 1989* (NSW) (the Act).
- 5 The building work was commenced prior to the commencement of the *Home Building Amendment Act 2011* (NSW). The homeowner, as a successor in title who acquired the property on which the works were carried out and has 7 years to bring proceedings for breach of statutory warranties in respect of such work from the date determined under the *Home Building Act 1989* (NSW) (the Act). (see *Gregorio v Cheadle* [2018] NSWCATAP 118).

6 When the homeowner made the application, it was in relation to breach of statutory warranty for 8 defects. It is conceded by the builder that those defects are within time. However, the homeowner formally amended her claim on 5 June 2018 and the respondent claims that the claimed items subject of the amendment are out of time (defects 9-13). The builder states that consideration of those defects would amount to extending the statutory period for further breaches of statutory warranty.

7 Immediately prior to the commencement of the 2011 amendments of the Act (that is, up to 31 January 2012), s 18E was as follows:

(1) Proceedings for a breach of a statutory warranty must be commenced within 7 years after:

(a) the completion of the work to which it relates, or

(b) if the work is not completed:

(i) the date for completion of the work specified or determined in accordance with the contract, or

(ii) if there is no such date, the date of the contract.

...

8 After the 2011 Amendments s 18E provided:

(1) Proceedings for a breach of a statutory warranty must be commenced in accordance with the following provisions:

(a) proceedings must be commenced before the end of the warranty period for the breach,

(b) the warranty period is 6 years for a breach that results in a structural defect (as defined in the regulations) or 2 years in any other case,

(c) the warranty period starts on completion of the work to which it relates (but this does not prevent proceedings from being commenced before completion of the work),

...

9 The *Home Building Amendment Act 2014* amended further amended s 18E commencing on 15 January 2015.

10 After the 2014 Amendments s 18E provided that:

18E Proceedings for breach of warranties

(1) Proceedings for a breach of a statutory warranty must be commenced in accordance with the following provisions:

(a) proceedings must be commenced before the end of the warranty period for the breach,

(b) the warranty period is 6 years for a breach that results in a major defect in residential building work or 2 years in any other case,

(c) the warranty period starts on completion of the work to which it relates (but this does not prevent proceedings from being commenced before completion of the work),

(d) if the work is not completed, the warranty period starts on:

....

11 Having considered the parties submissions and the legislation, the Tribunal is not satisfied that any of the defects would be out of time. Relevantly, each of the versions of s18E of the Act refers to the time when 'proceedings for a breach of statutory warranty' must be commenced.

12 The initial application was in relation to defects for breach of statutory warranty arising from the builder's work. The defects are all part of a cause of action for breach of statutory warranty.

13 In *Honeywood as executrix of the estate of the late Neville Honeywood v Munnings & Anor [2006]* NSWCA 215, the Court of Appeal dealt with s18E and whether proceedings for breach of statutory warranty barred further proceedings. Justice Handley stated:

- a. In *Conquer v Boot [1928]* 2 KB 336 the Divisional Court held that a proprietor only had one cause of action for breach of a contract to build in a proper and workmanlike manner with proper materials. Accordingly a proprietor who had obtained judgment in respect of some defects could not bring a second action based on different defects, even if these were not known to him when judgment was obtained in the first action. At 342 Sankey LJ said:

“The cause of action here is:

- (1) the contract to complete in a good and workmanlike manner a bungalow and (
- 2) the breach of it. I do not think that every breach of it – every particular brick or particular room that is faulty – gives rise to a separate cause of action.”

14 Similarly, the Tribunal finds that the inclusion in the action of additional defects concerning the building work does not create a new cause of action and the application for breach of statutory warranty has been made within time.

15 The Tribunal is satisfied that the homeowner had seven years to make the application and the application has been made within time. The Tribunal is satisfied on the evidence before it that the application involves a building claim as defined by s 48A of the *Home Building Act 1989 (NSW)* (HBA). The Tribunal is also satisfied that it has jurisdiction to determine the building claim pursuant to section 48K of the Act.

The Evidence:

16 The parties relied on the following statements and reports which were collated into a single bundle:

The applicants documents

- (i) Expert Report of Safe House Property Consultants dated 16 February 2017;
- (ii) Supplementary Report of Safe House Property Consultants dated 27 April 2018;
- (iii) Statement of conclave events by Shawn Moore dated 7 July 2018;
- (iv) Joint Expert Report dated 19 July 2018
- (v) Report of Safe House Property Consultants dated 5 August 2018;
- (vi) Affidavit of Robert Kirkbride dated 27 July 2017
- (vii) Statement of Julia Arndell undated;
- (viii) Statement of Jessica Kirkbride dated 27 September 2018;
- (ix) Affidavit of Richard Jerez dated 27 September 2018;
- (x) Jason Andrew Arndell dated 3 December 2018;
- (xi) Statement of Jessica Kirkbride dated July 2018.

The respondent's documents

- (xii) Affidavit of Robert Kostadinovski sworn 25 May 2018;

- (xiii) Affidavit of Robert Kostadinovski sworn 27 July 2018;
- (xiv) Affidavit of Robert Kostadinovski sworn 20 February 2019;
- (xv) Expert Report of Canberra Sydney Inspections dated 2 July 2018;
- (xvi) Joint Expert Report dated 19 July 2018.

17 The following parties were cross examined at the hearing:

- (1) Robert Kirkbride (the husband of the applicant)
- (2) Jessica Kirkbride
- (3) Robert Kostadinovski
- (4) Julia Arndell (previous homeowner)
- (5) Jason Arndell (previous homeowner)
- (6) Shawn Moore (expert for the homeowner)
- (7) Paul O'Donnell (expert for the builder)
- (8) Richard Jerez

18 All documents (subject to the objections were allowed at the hearing), oral evidence of the parties and witnesses given at the hearing, and submissions received have been considered by the Tribunal in coming to its decision.

The scope of the work

- 19 The builder disputes the works relevant to defect items 2,4,5,9 and 10 were ever part of his scope of building works.
- 20 The Tribunal does not have before it a copy of the contract between the builder and the previous owners. Mr Arndell, the previous owner stated he could not locate a copy of the contract. The homeowners were not a party to the contract and could not give evidence in relation to the scope of works contained in the contract.
- 21 Without a written contract, the Tribunal has no positive evidence before it that the builder did the works. The builder denies he has undertaken some of the works. Mr Kostadinovski was not particularly persuasive in some respects in cross examination and at times his evidence appeared self-serving. However he has maintained that in relation to some of the works they were not within his scope of works and that the previous homeowner had contracted with other contractors directly. The Tribunal accepts that in certain circumstances it may draw an inference from the evidence before it as to the scope of works.
- 22 The Tribunal will deal with the disputed scope of works in turn when it deals with each individual defect below.

Consideration of Defects

The experts

- 23 Mr Moore, the expert for the homeowner, and Mr O'Donnell the expert for the builder were both cross examined at the hearing. Having heard their evidence, the Tribunal has generally preferred the evidence of Mr Moore for the reasons set out in relation to each defect. Further, the Tribunal finds that

for a number of defects Mr O'Donnell indicated that the damage occurred because of use. Ms Kirkbride repeatedly denied that it was use that had caused the defects and the Tribunal was satisfied on her evidence the defects were not because of use.

- 24 There had been an initial report provided by the builder from Mr Merrick. The report had been provided in the proceedings prior to the granting of the set aside application and when the builder was self-represented. There had also been a conclave and Mr Merrick had agreed with many of the defects that were identified by Mr Moore and which Mr O'Donnell does not now agree with. The builder did not seek to rely on the report in the final proceedings however the homeowner often refers to it in submissions to state that Mr Merrick had found the defect when Mr O'Donnell had not. Mr Merrick was not called for cross examination and the Tribunal has not placed weight on the report in light of the fact that Mr Moore and Mr O'Donnell were at the hearing, gave evidence and were cross examined.

Item 1 - Leaking upstairs balcony

- 25 There was no dispute by the builder that this area related to part of the builder's scope of works. Ms Kirkbride stated that on 18 August 2014 the property experienced water damage and leaks during a storm and photographs were taken a few days later showing a failure of the upstairs balcony. Ms Kirkbride contacted her insurer, whose nominated builder visited on 21 August 2017 and who observed defective work in the damaged areas. Ms Kirkbride later discovered that Mr Kostadinovski had been the builder and arranged a site meeting on 20 October 2014.
- 26 Ms Kirkbride attached photographs to her affidavit of the collapse and deterioration of the soffit lining through water damage. Mr Moore, also

observed the water damage, as well as poor detailing to the upper tiled surface in the tiling which blocked the door sill drainage and a lack of upturn to sill flashing. Mr Moore identified excessive movement in the balustrade. He observed that sealant had been applied at the junction between the house wall and tiled balcony, blocking drainage away from the house. He observed there was no waterproofing upturn between the wall and balcony which would protect the house. In his reply report, Mr Moore photographed water damage within the balcony structure which he states originates from a waterproofing failure on the tiled upper side, along with water staining to the wall beneath the balcony. He further observed decay in the untreated timber structure of the balcony.

- 27 The builder submits there is no evidence of water leakage or water damage to the balcony and that the builder has not breached any obligations given that at the time the balcony was constructed there was no requirement for waterproofing as AS4654 was not in effect at the relevant time. Mr O'Donnell also stated there was no evidence of water in the house associated with the veranda. Mr O'Donnell stated that the only issue was the wrong plasterboard had been used and the balcony did not need to be waterproofed.
- 28 Having considered the evidence the Tribunal is satisfied on the evidence of Mr Moore that the upstairs balcony is not waterproofed properly and the veranda was not built in a proper and workmanlike manner or with due skill and care.
- 29 The Tribunal accepts from the evidence of Ms Kirkbride and Mr Moore's observations and photographs 6 and 8 in Mr Moore's report dated 5 August 2018 that there is leaking and that the leaking is due to the defective work of the builder and not, as is claimed by the respondent, water from the storm. Regardless of whether AS4654 applied at the time, the veranda should not

leak and based on the evidence of Mr Moore the Tribunal finds that the leak is due to an inadequate step-down to the balcony and lack of upturn of the waterproofing's or flashings in the sliding door. In light of the photographs, the Tribunal also accepts Mr Moore's observations of water penetration on the upper tiles deck surface towards the soffit lining underneath. The evidence demonstrates that the water is running and entering the downstairs living room through the window head. (See Mr Moore's supplementary report. 27 April 2018, para 7.10 and photo 15).

- 30 Mr O'Donnell allowed \$2,464 for the cost of rectification. The Tribunal prefers the costings of Mr Moore which are detailed and which he revised and total an amount of \$29,291. Mr Moore's costings more adequately apply to the method of rectification he has proposed

Item 2 – Front Patio

- 31 Mr Kostadinovski maintained in cross-examination that he had no responsibility for the patio balustrade and that the previous homeowners contracted with the same subcontractors directly in relation to the balustrade. Photographs of the front of the house show the downstairs balustrade matching the style of the upstairs balcony balustrade.

- 32 The Tribunal accepts that the upstairs was part of the works and finds it implicit in the evidence of Mr Arndell that Mr Kostadinovski was responsible for the work. At paragraph 6 of Mr Arndell's statement he stated that:

Mr Kostadinovski engaged a firm called GM Fabrications when the balustrades were constructed and that firm completed the balustrades.

- 33 Mr Moore identified that the balustrade was loose and not fixed into anything more than the tiles and grout and that the timber elements were decaying.

34 Mr O'Donnell alleges that the handrail failed through misuse. The Tribunal does not find evidence that the handrail was defective due to misuse and prefers the evidence of Mr Moore on this point and accepts that the installation was defective. Mr Moore stated that the cost to rectify was \$,2165.72 and Mr O'Donnell claimed it was \$304. The Tribunal prefers the costings of Mr Moore because it included the costs of painting, the fixings, replacement of the tiles and clean-up which the Tribunal finds necessary for the rectification.

Item 3 – Roof Plumbing

35 The Tribunal also accepts from the evidence of Mr Moore this work was defective. There is a roof leak in the kitchen which Mr Moore stated was due to the lack of a spreader pipe and sealing of the laps of roof sheets. Mr O'Donnell denied a leak or alleged cracking. Ms Kirkbride also referred to the cracking. The Tribunal accepts there is a roof leak from the plumbing and the lack of a spreader. Mr O'Donnell allowed an of \$175 for rectification. The Tribunal prefers the costings of Mr Moore of an amount of \$1,121 because it properly reflects the work required for rectification and allows for painting and a plumber and plasterer.

Item 4 – Termite shielding

36 The builder primarily submits that the termite shielding was not part of his scope of works. The Tribunal finds that the termite shielding was part of the scope of works. Given the extensive works that were done by the builder it is implicit that the termite shielding was part of the part of the scope of works as it was necessary in order to be certified.. Mr O'Donnell conceded in cross examination that the certifier had required termite protection.

37 Mr Moore photographed missing termite shielding from a subfloor area. Mr O'Donnell suggested that all the new works had termite shielding and that the lack of shielding was in an old area of the house rather than part of the new build. Again, the Tribunal prefers the evidence of Mr Moore's and in particular refers to photo 3 of page 12 in the reply report of Mr Moore dated 5 August 2018 which indicates a lack of termite shielding in the new part of the house. The experts agreed that the cost to do the work was \$2,700 and that amount is allowed.

Item 5 – subfloor brick pier

38 The builder disputes that this work relates to the scope of works he undertook. The alleged defect is that the sub-floor brick pier is leaning and has been 'stepped out' to allow for pipes to pass. The Tribunal is satisfied from photo 21 in the report of Mr Moore dated 27 February 2017, that the pier is leaning due to the new works and the passing of pipes and a consequence of the builders works. The Tribunal accepts that this was damage as a consequence of the builders scope of works and also accepts that it is a defect attributable to the builder. Mr O'Donnell's stated he could not see movement or cracking and that the work was certified.

39 The Tribunal finds from the evidence of Mr Moore and the photographs that the pier is defective. Mr O'Donnell has not allowed a costing for this amount. The Tribunal accepts Mr Moore's costing of \$676.00 for rectification.

Item 6 – Subfloor bearer

40 Mr Moore stated due to the sagging bearer timbers and uneven brick piers there was a defect to the family room floor. Mr Moore provided two photos of the deflection (photos 22 and 23). Ms Kirkbride played a video showing her

walking on the deflecting floor. Mr O'Donnell did not agree that there was a deflection. Mr O'Donnell took a photo of the kitchen bearer but from a greater distance than Mr Moore. Having considered the evidence, the Tribunal is satisfied on the photos of Mr Moore and the video of Ms Kirkbride that there is a deflection and that it is as a result of the work of the builder and the unsupported bearers.

- 41 Mr O'Donnell has not allowed a costing for this amount. The Tribunal accepts Mr Moore's costing of \$1,446.00 for rectification of this issue.

Item 7 – subfloor ventilation

- 42 Mr Moore identified a lack of ventilation holes in the subfloor area and the growth of mould at 7.38 of his report dated 2 July 2018. He has also provided photographs. He identified non-compliance with ventilation standards in the Building code of Australia.

- 43 Mr O'Donnell claims that the property has compliant ventilation except to the rear of the property where the owners have enclosed and extended the decking of the property. Mr O'Donnell noted that the subfloor areas were dry indicating good drainage in and around the property. Mr O'Donnell stated the work was certified and he could see no mould.

- 44 Based on the photographs the Tribunal prefers the evidence of Mr Moore that there was mould and it was due to the property being unventilated and there is a lack of ventilation holes in the works undertaken by the builder. The Tribunal accepts the costings of Mr Moore of \$4,534 for this item as the costing are itemised as opposed to the lump sum amount of \$2,300 allowed by Mr O'Donnell.

Item 8- Ensuite Bathroom

45 Mr Moore identified high moisture at the entry door to the ensuite and high moisture in the bedroom ceiling beneath the ensuite. He also noted discolouration in the timber. He attributes the moisture to a shower waterproofing membrane failure. Mr O'Donnell denied evidence of any leak beyond a possible past plumbing repair. He did not agree with the moisture readings Mr Moore.

46 The Tribunal prefers the evidence of Mr Moore as Ms Kirkbride also stated that water dripped into her son's bedroom during a flood test of the shower. She added the ensuite was used in only a limited manner and no repairs had been undertaken.

47 The Tribunal accepts that the leaks are in relation to a membrane failure in the shower and allows the amount from Mr Moore of \$5,311.52 as it was an itemised costing to repair the waterproofing and damage and Mr O'Donnell only allowed a lump sum costing of \$770.

Item 9 - Garage Render

48 The builder alleges that this was not part of his scope of works. There is not positive evidence, even implicitly, to suggest that this was part of the works and the Tribunal is not satisfied that this was part of the scope of works.

Item 10 – broken power points and light switches

49 The builder alleges that this was not part of his scope of works. Given the evidence of Mr and Mrs Arndell about the extent of the interior works it is implicit that these items which are new would have been part of the scope of works.

- 50 Mr Moore stated that 16 general power outlets and one light switch were loose due to overtightening of their mounting points. Mr O'Donnell stated that the points are broken through pulling misuse. Again Ms Kirkbride denied the misuse and the Tribunal accepts on the photos included by Mr Moore that the defects exist and are attributable to a defect found in their installation.
- 51 The Tribunal allows the amount of \$2,586,20 as allowed by Mr Moore as it allows for the repair of the 16 outlets by an electrician where as Mr O'Donnell only allowed \$45 and it appears that was for only two outlets.

Item 11 – Windows

- 52 The homeowner alleges a number of leaks in the windows including that the southern lounge window was out of square and that the north-east lounge and the bedroom windows were incorrectly installed. Mr O'Donnell said the southern lounge window could be put back in square using its 'roller wheel adjustment screw'. He stated that the internal moisture could be explained by windows left open in a storm.
- 53 The Tribunal again prefers the evidence of Mr Moore. Ms Kirkbride denied she had left the windows open during the storm and provided a a video of water leaks in a storm, with the window shut.
- 54 Mr O'Donnell was not willing to accept the defect's and minimised the significance of the defect, attributing it to use, which the Tribunal has not accepted. His method of rectification was to simply to use sealant on the windows. The Tribunal accepts that there are defects in the window installation and prefers the reasons and method of rectification of Mr Moore for the replacement of the defective works and frame at an amount of \$6,064.64.

Item 12 - Incorrect external fixings

- 55 Mr Moore states that the fixings to the exterior of the house are inappropriate for a coastal and industrial environment and have rusted. Mr Moore identified that the builder did not follow the James Hardie advice for exterior cladding in harsh environments and that the galvanised nails that were used were inadequate.
- 56 The Tribunal finds that the installation and materials used amount to a defect. The photographs show a presence of rust.
- 57 Mr O'Donnell stated that there was very minor rusting. He stated that the fixings were in the architraves not in the cladding and that the minor rust on nails could be treated as a simple maintenance issue.
- 58 The Tribunal finds on the evidence of Mr Moore that there is rust and that it is attributable to the installation and materials used by the builder and that the issue was not simply minor rusting. The Tribunal also prefers the method of rectification and costings proposed by Mr Moore totalling an amount of \$22,206.53 as it includes amounts for scaffolding (which the Tribunal finds is necessary) and Mr O'Donnell only allows an amount of \$608 for paint the existing rust fixings.

Item 13 - Roof leak

- 59 Mr Moore identified a fixing problem in relation to the use of improper roofing screws. He found that the fixings had corroded and that they were contributing to the water staining in the lounge room ceiling. He found that there was a breach of the relevant Australian Standard, that 'Class 4' fixings were necessary in a breaking-surf environment (i.e. fixings with strong corrosion

resistance). Mr O'Donnell said the examples of rusted fixings were relatively small.

60 The Tribunal is satisfied on the evidence of Mr Moore, including the photos, that many of the screws are rusted and the Tribunal finds that inadequate screws have been used.

61 Mr O'Donnell's costing to repair is only for repair of visibly rusted screws and the Tribunal does not accept this method of rectification is adequate. The Tribunal accepts the method of rectification of Mr Moore and allows an amount of \$2,228.80 for the rectification to replace all screws of the incorrect grade.

Item 14 – Air conditioning

62 This is claimed by the homeowner as an incidental cost. This is not a defect identified by Mr Moore and the Tribunal is not satisfied on the evidence that there is a defect and does not allow an amount for the air conditioning.

S48MA and the preferred outcome

63 The applicant was seeking an order that the respondent should be ordered to pay compensation and not be entitled to the preferred outcome in s 48MA of the HBA.

64 The builder submits that to the extent that the builder is found to be responsible for defective the Tribunal should make a work order. The builder states that to date the builder has not been given the opportunity to visit the property and rectify any of the defects.

65 The Tribunal is satisfied to make a money order. The Tribunal does not consider relevant the builder's licensing history and previous claims, however the builder has had opportunities to rectify the works and has not done so. He has denied almost all the defects and most have been made out against him. He has also denied a large part of the scope of works and those have also been made out against him. Having observed the parties over four days and the polarisation of the parties in this matter, it is evident any working relationship would be difficult.

66 In those circumstances, the Tribunal is not satisfied that the respondent should be entitled to return to complete the works and will make a money order instead.

Money Order

67 The Tribunal has allowed the amounts proposed by Mr Moore in relation to each of the defects. The Tribunal also accepts Mr Moore evidence that a 30 percent builders' margin should be allowed. The amounts were not inclusive of GST and the Tribunal also allows GST on the total amount.

68 The builder also maintained that the homeowners failed to mitigate loss in making the application. The Tribunal does not accept any failure to mitigate loss and accept that the homeowner gave adequate notice of the breaches to the builder and the claim was bought within a reasonable time of the homeowner being aware of it.

69 The homeowner proposes that the Tribunal should award the higher amount for the defects as proposed in the quotes of Jerez Enterprises totalling \$260,767.76. The Tribunal is not satisfied to allow those amounts.

- 70 While the Tribunal accepts that a quote can in some circumstances provide a better indication of the market costs of works, in cross examination Mr Jerez was unable to explain how the amounts for each of the thirteen (13) items were calculated in reference to the report of Mr Moore and on that basis does not award the amount in the quote.
- 71 Finally, the homeowner has also claimed alternative accommodation in the sum of \$10,200 and storage of belongings in the sum of \$3,000.
- 72 The Tribunal is not satisfied to grant those amounts. The evidence does not establish that homeowner requires alternative accommodation or storage of belongings. The amount is not allowed.

Orders

- 73 Accordingly, the Tribunal allows the following amounts to the homeowners

| | |
|----------------------|------------|
| Balcony | \$29,291 |
| Front Patio | \$2,165.72 |
| Roof Plumbing | \$1,121 |
| Termite shielding | \$2,700 |
| Subfloor brick pier | \$674 |
| Subfloor bearer | \$1,446 |
| Subfloor ventilation | \$4,534 |
| Ensuite bathroom | \$5,311.52 |
| Electrical outlets | \$2,586.56 |
| Windows | \$6,060.64 |

| | |
|----------------------------|------------------------|
| Cladding and window fixing | \$22,206.53 |
| Roof Fixings | \$2,288.80 |
| Total for defects | \$78,418.77 |
| Builder Margin 30% | \$23, 525.63 101944.40 |
| GST 10% | \$10,194.44 |
| Total owing | \$112,138.84 |

74 The Tribunal makes the orders accordingly and has made provision for any costs application in the directions.

I hereby certify that this is a true and accurate record of the reasons for decision of the New South Wales Civil and Administrative Tribunal.

Registrar

