DISGRUNTLED BUILDERS LOSE DEFECTIVE CLADDING DISPUTE

In *Goodman-Jones v Hughey & ors* [2023] NZHC 604, two experienced builders brought a claim for damages for a perceived defective installation of cladding for a new build. Despite the action being brought against multiple defendants the Court found that no damages could be substantiative, and with it the costly six year ordeal was brought to an end.

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The setting

Between 2014–2016 Phillippa and Gareth Goodman-Jones (the plaintiffs) built an architecturally designed home on the Lyttelton Harbour.

At the time that building consent was obtained in March 2014, Mrs Goodman-Jones had been a quantity surveyor for 32 years. She was also the former national president of the New Zealand Institute of Quantity Surveyors, and one of the services she provided was to project manage construction costs. The Court noted that *the architectural build of the plaintiffs' home was typical of this*.

Mr Goodman-Jones worked for a company that sold the Western Red Cedar vertical cladding. The same material was to be used on the house. He was also a carpenter for almost his entire working life and was


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→ The High Court held that although the defendants had used the wrong materials and installation methods to build parts of a house, this was not enough to show damages.

used to difficult builds.

The Goodman-Jones' became responsible for engaging contractors, acquiring timber, joinery and windows, and arranging for materials to be delivered.

The plaintiffs contracted David Hughey (the first defendant) to be their builder, but the contract was terminated in June 2016 by mutual consent.

The dispute

The plaintiffs subsequently initiated court proceedings against Mr Hughey for both breach of contract and negligence in carrying out the commissioned works.

The substantive issue revolved around the alleged defective ordering, acceptance and installation of external framing and cedar cladding. The plaintiffs argued that the cladding needed to be replaced at a cost of $465,427. Further damages of $162,043 for failing to complete the works within a reasonable time and overcharging were also made, but subsequently dropped.

The external wall framing was made by PlaceMakers (the second defendant). The plaintiffs argued that PlaceMakers were also liable for failing to supply the framing in accordance with consented specifications.

Effectively the plaintiffs' arguments were that PlaceMakers made the frames to the wrong measurements and that Mr Hughey installed these frames and used them to affix the cedar cladding onto. They argued this resulted in the building not being weathertight and therefore not being compliant with the building consent that they had obtained.

The two defendants joined in Christchurch City Council to the proceedings on the basis that, should they be found liable, the Council should share in that liability as the Council was negligent in carrying out the inspections.

The plaintiffs argued that Mr Hughey was the project manager for the build. However, the Court disagreed; finding that a labour-only contract had been signed and Mr Hughey did not assume any responsibility for the overall project management of the build.

The relationship soured over the coming months, and on 9 October 2015 Mrs Goodman-Jones emailed Mr Hughey to complain about the lack of progress, the amount it was costing and that he was *seriously letting the side down*. She

asked for urgency in getting the windows, doors and cladding affixed. Arguments continued around delays and, finally, around Christmas Eve of 2015 Mrs Goodman-Jones was said to be *on the verge of a mental breakdown*.

After further disagreements, on 10 June 2016 both parties agreed to terminate the contract with Mr Hughey, who stated it was the first time he never completed a build that he had started, which was all down to the souring relationship. At the time of termination the cladding was almost complete and only one section remained.

The plaintiffs were not happy with the cladding. The cedar cladding needed to be fixed to the framework that was ordered, directly by the plaintiffs, from PlaceMakers. However, there was a difference in spacing between the framework provided by PlaceMakers and the consented plans. The dwangs (horizontal bracing pieces used between wall studs in the frame) were supposed to be spaced at 400 mm. However, the framework supplied was actually spaced at 480 mm, with some closer to 500 mm. Hence, why proceedings were commenced against both PlaceMakers (for supplying the defective materials) and Mr Hughey for installing said materials.

Mr Hughey argued that it was not necessary to redo the whole house and that if there were issues with any isolated boards they could be remedied and replaced.

Decision of the High Court

The Court dismissed the claim and found in favour of all the defendants.

In doing so, the Court held that *cedar cladding, with in-built dwang spacings generally at 480 mm centres, does comply with the Building Code*. The Court found that there was no reason based on the evidence why the building would not get Council approval for a minor variation to the consented plans as installed; and that ultimately the plaintiffs would *be able to obtain a code compliance certificate for the building of their home as built, once certain completion work is carried out*.

The Court ruled that ultimately there was *no reason to suspect there will be a failure of the cladding system or weathertightness issues that could affect the value of the home*.

Therefore, subject to some liability for certain minor rectification work, which Mr Hughey agreed to, he was not liable for any further damages.

In dismissing the claim against PlaceMakers the Court ruled that whilst it had been provided with the original consents plans from the plaintiffs when PlaceMakers provided a quote for the materials, the estimate provided was based on the dwangs being at 480 mm (not the 400 mm as specified in the plans). However, the 480 mm was in accordance with Timspec specifications and the normal Building Code requirements. The plaintiffs instructed PlaceMakers to build the framework in accordance with the quote they received, so there was no breach of contract; and *to the extent there was a 20 mm difference from that spacing in certain instances, there was still reasonable compliance with what they had to build. The framework they provided was fit for purpose*.

The Court ultimately held that because the framework *complied with the Building Code and a code compliance certificate can be issued with the framework as constructed, the plaintiffs have suffered no loss through PlaceMakers constructing and supplying the framing as used*.

Conclusion

Ultimately this is a cautionary tale about the trappings in any claim for damages. You must be able to show actual damages. It is not enough to argue that there was a variation in the building specifications. The Court ultimately ruled that this variation in the timber frame was all largely immaterial and that any remedial work needed would be minimal. It did not require a complete gutting of the house as alleged by the plaintiffs, and that they had to take on some responsibility for the fact that the build was not completed to plan because they had agreed with the supplier by accepting the quote for the wrong size materials to begin with. Now the plaintiffs will have their own legal costs to bear and likely a significant sum, as yet undetermined, towards the defendants' costs – which meant this was a very costly exercise indeed.