Moving home

A family became dissatisfied with a house removal firm who had shifted their home from Remuera to Katikati. In ***Stott v Uplifting Homes Ltd*** **[2023] NZHC 1514**, the High Court determined the level of compensation after the contract was cancelled.

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Background

In July 2019 the plaintiffs Mr Stott and his partner Ms Savageau (**plaintiffs**) bought an early 20th century wooden bungalow from the Hamilton-based Uplifting Homes Ltd (**Uplifting**) for $158,000 (inclusive of GST), to be relocated from Remuera to Katikati. The sale price also included building consent plans to be drawn and submitted on the plaintiffs' behalf with *no changes to the original floor plan and using existing roofing materials*.[1]

The home was transported in October 2019. Its resiting was complicated by the Western Bay of Plenty District Council's insistence on the provision of extra bracing, foundation work and roof structure because of the higher Katikati wind zone.

Under the contract the parties agreed to the following relevant terms and conditions as summarised:

- Uplifting was *responsible for ensuring that the relocation of the building is carried out in a professional, workman-like manner for the duration of this contract in accordance with the conditions of trade*.[2]
- *All work carried out by Uplifting... will comply with* the New Zealand Building Code and NZS 3604:2011, *the New Zealand standard means of compliance with the Building Code for the structure of timber-framed buildings*.[3]

1 *Stott v Uplifting Homes Ltd* [2023] NZHC 1514 at [11].
2 *Stott*, above n 1, at [10].
3 This was also a term of the building consent.

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→ Damages obtained in case involving relocation of a family home.

- The home would be resited with existing materials only and Uplifting was not responsible for damage when the home was on the temporary piles.

The contract was therefore for a building work under a residential building contract and the warranties under the Building Act 2004 were implied as was the time for completion under the Consumer Guarantees Act 1993.

The plaintiffs were distressed and devastated by the state of the house on its receipt and the likelihood it would suffer further damage while on the temporary foundations at their Katikati property.[4] There was disagreement as to storm damage and the normal incident of damage as part of the relocation. Uplifting's agent Prestige Builders met with the plaintiffs and made a number of concessions and promises.

Pending building consent being obtained, the home was placed on temporary foundations on the Katikati site. After building consent was obtained on 13 May 2020 (after the Covid-19 lockdown was lifted), Uplifting re-established the house on permanent foundations in July 2020 and relined and reroofed the house, albeit incompletely.

Uplifting's attendances on the site thereafter were sporadic. Prestige Builders arranged work on the roof which in January 2021 the plaintiffs' builder expressed concerns about. The builder's report noted poor rejoining of the house and that a considerable amount of work would be needed to remedy defects. There were areas of severe timber decay and the roofing and piles were problematic. Quantity surveyors engaged by the plaintiffs assessed the cost of these works to exceed $520,000 (including GST); alternatively, demolition and make good costs of $24,000–$33,000 (including GST).[5] The Judge later ruled this expectation was unrealistic.

Nothing was done by Uplifting after mid-November 2020, and by mid-June 2021 reasonable time for completion had passed.[6] Justice Jagose did note:

> [60] … it is relevant the Savageau/Stotts pleaded such purpose to be "of such a nature and quality as to render [the building] suitable for occupation by the plaintiffs as their family home". That contention cannot be maintained: on any view, after the building was to be re-erected on site, very substantial works remained the Savageau/Stotts' obligation to render the house suitable for

4 *Stott*, above n 1, at [19].
5 *Stott*, above n 1, at [37]
6 *Stott*, above n 1, at [58].

> occupation. … Nor had Uplifting any obligation to protect the building from weather or other damage on its temporary platform on site: clauses 16 and 18 of the contract made it plain such was not Uplifting's liability.

By letter of 9 April 2021, the plaintiffs' solicitors wrote to Uplifting alleging its poor work quality and contractual breaches and seeking reimbursement of the plaintiffs' expenses together with removal of the home from the site. Ultimately on 19 July 2021 the plaintiffs' solicitors gave notice to Uplifting's solicitors that they cancelled the 22 July 2019 contract, relying on breaches of the Consumer Guarantees Act (section 28 as to reasonable skill and care, section 29 as to fitness for particular purpose and section 30 as to time for completion). Alleged breaches of the Building Act 2004 were also referred to, namely section 362I(1). Proceedings were issued on 27 August 2021.

On 24 May 2022 the plaintiffs sold their Katikati property for $1.25 million on conditions including the house's removal, which was demolished accordingly. They moved to Nelson.

The plaintiffs went to trial claiming $33,000 in wasted costs and $35,000 in general damages on the basis of breach of contract entitling cancellation. They relied on the Building Act 2004, Consumer Guarantees Act 1993 and Contract and Commercial Act 2017.

The decision

The Judge recognised the breaches of warranty were *substantial,*[7] *because a reasonable client fully acquainted with the nature and extent of the breach would not have entered into the residential building contract.*[8] This permitted the plaintiffs to cancel.[9]

The relief fell to be considered on *compensatory, rather than damages, principles: from identification of what the innocent party "actually lost by reason of the breach", rather than their position if the contract had been performed.*[10]

Justice Jagose commented:

- Beyond the monies paid to Uplifting under the resiting contract, the plaintiffs' other expenditure in connection with the contract's performance prior to getting a building consent was at their own risk.
- *Uplifting affirmed the contract by commencing piling works in early June 2020, the Savageau/Stotts' subsequent expenditure under the contract was attributable to their expectation Uplifting would perform its contractual obligations.*[11]
- The plaintiffs' expectations were unrealistic in terms of the contract they entered with Uplifting. They appeared to have no prior comprehension of additional requirements for their home's establishment on the new site beyond Uplifting's transportation and re-erection of the building there, which the contract firmly made their responsibility as work *not specifically expressed.*[12]
- The damage following transportation was in line with expectations.
- When the home was on its temporary pilings, Uplifting was *not responsible for any damages that may occur to the building.*[13]
- It was to Uplifting's credit that they responded to the plaintiffs' persistent requests for help.
- The plaintiffs tendered a list of specific "losses". The rental claim was ruled as being too speculative to *establish such loss*

7 Section 362O of the Building Act 2004.
8 *Stott*, above n 1, at [66].
9 *Stott*, above n 1, at [68].
10 *Stott*, above n 1, at [69]; and *Forest Holdings Ltd v Mangatu Blocks Incorporation* [2017] NZHC 448, [2017] NZAR 671 at [27]–[29], citing *Maori Trustee v Clark* [1984] 1 NZLR 578 (CA) at 584.
11 *Stott*, above n 1, at [72].
12 *Stott*, above n 1, at [78].
13 *Stott*, above n 1, at [80].

as reasonably foreseeable.[14]

- A 50% deduction on the compensation claimed was ruled appropriate to recognise Uplifting's *legitimate and compliant expenditure under the contract*.[15]

The Judge deducted $22,400 which the plaintiffs had received under their insurance policy, but gave no recognition for the cost of demolition of the home nor for the plaintiffs' building experts' reports.

Following a six day hearing, Justice Jagose granted the plaintiffs compensatory damages in the sum of $94,911.53 for the actual loss by reason of Uplifting's breaches under section 43(3)(3)(a) of the Contracts and Commercial Law Act 2017. The basis of the reduced quantum has the strict wording of the contractual requirements and the obligations imposed on each party.

Conclusion

In shifting a dream home, one must have reasonable expectations of having to expend thousands of dollars in making the home habitable once it is resited. It is necessary to review the contractual terms prior to engaging with the relocation firm. Judgment was obtained but was not entered for the full sum sought, and the costs and delay of the litigation make arbitration attractive, such as offered by the Building Disputes Tribunal.

14 *Stott*, above n 1, at [74].
15 *Stott*, above n 1, at [85].