

See Box 5 of Court Judgements
Leahy Building

CLAIM NO: 02368

UNDER The Weathertight Homes Resolution Services Act 2002

IN THE MATTER of an adjudication

BETWEEN **CHRISTINE MURIEL WEST** and **WILLIAM HENRY HAWKEN** as Trustees of the **CHRISTINE WEST FAMILY TRUST**

Claimants

AND **GLENN ANDREW PERRY** and **LYNDA MAREE PERRY**

First Respondents

AND **JESSOP ARCHITECTS LIMITED**

Second Respondent

AND **BERNIE W LEE** trading as Island 2000

Third Respondent

AND No fourth respondents, Michael Craig Norgate and Alison Jane Norgate having been struck out

AND No fifth respondent, Clive Robert Lonergan having been struck out

AND No sixth respondent, Curnow Realty Limited trading as Bayleys having been struck out

DETERMINATION OF ADJUDICATOR
(Dated 14 July 2006)

Intituling continued next page

8. STIGMA CLAIMS

- 8.1 The Owners are claiming an amount of \$115,000.00 for damages for stigma attached to this property. This claim is calculated at 13% of the value of the property. It is based upon the grounds that this house has been publicly identified as being a "leaky building", which will cause a depreciation in the value of the property.
- 8.2 Mr Hawken, in his closing submissions, relies upon research data reported in the March 2004 issue of the *NZ Property Journal* in which, he says, is a comprehensive review of material available to date. It concludes with a statement that there is conclusive evidence among property professionals that there is a residual stigma after a leaky home has been remediated in the range of 10%-15% of value.
- 8.3 He also says that a survey, completed in September 2003 by Professor Hargreaves and Song Shi of Massey University, found that 95% of those surveyed thought that there was a residual loss in value from leaky home stigma. Unfortunately, Mr Hawken did not provide me with copies of the article in the *NZ Property Journal* or the survey done by Massey University, although I certainly am familiar with a research paper prepared by Song Shi as a part of her studies towards a Masters Degree at Massey University.
- 8.4 The respondents all submit that there is no proof of any loss due to stigma caused by leaks in this house, and generally rely upon the expert testimony from Mr Gamby on this matter.
- 8.5 Claims for loss as a result of stigma have been considered in WHRS adjudications, and I was referred to two of my own determinations – in *Millar-Hard v Stewart & Ors* (WHRS Claim 765, 24 April 2004) and in *Gray v Lay & Ors* (WHRS Claim 27, 11 March 2005). In the *Millar-Hard* decision I said:

The Owners are claiming that their house has suffered a diminution in value due to the stigma that has attached to "leaky homes". The Owners referred me to a research paper by Song Shi prepared as a part of her studies towards a Masters degree at Massey University. The conclusion was that there was clear evidence of a "stigma" directed at monolithic-clad houses, and that an average loss in value of about 13% was being experienced.

- 8.7 Mr Gamby, also a registered valuer, gave a contrary opinion. In his view, if the correct remedial work was carried out (as claimed by the Owners) then no residual stigma would attach to the property.
- 8.8 Ms Bambury and Mr Sullivan both made submissions that Mr Mitchell was not an expert on stigma and his opinion had no reasoned basis. Therefore, they say, the Owners have produced absolutely no evidence to support this claim.
- 8.9 This is a substantial claim, and yet the Owners have not provided any solid evidence to prove the claim. In Mr Hawken's closing submissions he referred to material that had not been produced in evidence, and if it had been, it was no more than hearsay evidence. Mr Mitchell, with all respect, is not an expert on stigma, and he accepted that was the case. He is a professional valuer, who has adopted a percentage figure for stigma that had been opined by others.
- 8.10 The Owners may have shown that their house has achieved some form of notoriety because it was displayed on the front page of the *NZ Herald*, but that does not mean it would suffer a drop in value as a result of this exposure. I was not told what was in the *Herald* article. The Owners have not come close to proving that the value of their house will be diminished on account of the leaks, particularly after it has been properly rectified. I will dismiss this claim for damages due to stigma.

9. INTEREST

- 9.1 In the Owners' detailed particulars of claim, they claimed interest at 7.5% per annum on "expenses, to be advised". I have not been given any further information, so I must presume that the claim relates to monies that have already been spent on remedial work.
- 9.2 I have found that the Owners are entitled to reimbursement of a total of \$25,684.59 inclusive of GST (refer paragraph 6.2.9 above). This work was carried out in June to August 2004.
- 9.3 An adjudicator has the power to award interest pursuant to clause 15 in the Schedule to the WHRS Act, which reads:

- (1) Subject to subclause (2), in any adjudication for the recovery of any money, the adjudicator may, if he or she thinks fit, order the inclusion, in the sum for which a determination is given, of interest, at such rate, not