

The following is the latest Weathertight Homes Tribunal decision that I am aware of where stigma was considered by the adjudicator: P McConnell.

**IN THE WEATHERTIGHT HOMES TRIBUNAL
TRI 2008-100-000001**

BETWEEN	RICHARD and RENEE SELL Claimants
AND	KENNETH HARRIS First Respondent
AND	AUCKLAND CITY COUNCIL Second Respondent
AND	KEVIN TRIBE Third Respondent
AND	GARY SMITH Fourth Respondent

Hearing: 20, 21, 22 and 23 April 2009

Appearances: D Carden, for Claimants
P Dalkie, for First Respondent
F Divich, D Heaney SC and N Stone, for Second Respondent
S Roe, for Third Respondent
No appearance by Fourth Respondent

Decision: 13 May 2009

FINAL DETERMINATION
Adjudicator: P McConnell

Stigma

[66] Mr and Mrs Sell are claiming \$33,000.00 for stigma. The basis of this claim is that even though remedial work has been completed there is still a stigma attached to the property, as a prospective purchaser would pay a lesser price due to the knowledge that it has been a leaky home. Mr and Mrs Sell submit that the market and in particular potential prospective purchasers would take into account the fact that the house had in the past been a leaky home and accordingly the house would achieve a lower price when sold.

[67] James Clark, a registered valuer, had been instructed by Mr and Mrs Sell to value the property in April 2006 and then subsequently after completion of the remedial work. His opinion was that a discount of approximately 5-10% of the value of the property would not be unreasonable when assessing the potential market value of this property given the fact that it had been a leaky home. His opinion was that there is a market resistance to homes which have been leaking and damaged even though they have been repaired. He believes that market resistance is reflected in lower prices being obtained.

[68] Mr Gamby, on behalf of the second respondent, however expressed an opinion that stigma in relation to leaky homes can more significantly be attached to the type of construction. His submission is that all monolithically clad homes attract a stigma regardless of whether they have been leaking or not. This point was acknowledged by Mr Clark who further acknowledged that any stigma attached to a repaired home could be less than that attached to a monolithically clad home that had not been repaired.

[69] Mr Gamby produced an article by Dr Michael Rehm of the Department of Property at the University of Auckland entitled "Judging a House by its Cover: Leaky Building Stigma and House Prices in New Zealand" (2009) 2(1) International Journal of Housing Markets Analysis, 57. In that paper Dr Rehm's analyses sale details of housing over a number of years in accordance with cladding materials. Based on his analysis of that information, he concludes that monolithically clad homes in general attract stigma. He further concludes that another avenue towards reducing leaky home stigma is appropriate remedial design. He states at p 74 that:

"It is possible for a monolithic-clad property to recoup some of the stigma value loss if it is re-clad with a different material and the new cladding system features a vented cavity to mitigate against future weathertightness problems."

[70] It would be unrealistic to conclude that there would be no diminution of value for a leaky home that has been repaired. The difficulty claimants face with stigma claims is however twofold. Firstly, evidence suggests that all monolithically clad homes may attract a stigma or reduction in value because of the cladding material itself regardless of whether they leaked. It is the claimants who have in this case chosen to build, or in other cases chosen to purchase properties, which are monolithically clad.

[71] The second problem facing claimants is one of proof of actual loss. There are a number of factors that affect the purchase price or value of properties. In a rising market, or where there is a shortage of homes, an appropriately remediated formerly leaky home may attract very little, if any, stigma or reduction in value. However, in a depressed market this factor may have more relevance and mean a lower price could be obtained. Until such time as the claimants sell their property at a loss it is difficult to establish loss and therefore very difficult to conclude that there is any loss due to stigma.

[72] In any event, the claimants have significantly reduced any potential stigma damage by changing the cladding material. I accordingly conclude that the claimants have failed to establish any diminution in value of their property due to stigma and this part of the claim is therefore dismissed.

Evan Gamby synopsis

My conclusions from this decision are:

1. The adjudicator accepts that Stigma is inherent in the type of cladding but has still missed the vital point that if it was there before and it is there after then the stigma always existed.
2. James Clark for the applicant acknowledged at [68] that stigma would be less after repair (read remediation).
3. I did not accept that stigma applied after remediation to any greater extent that was already inherent in the building and was therefore misquoted.
4. The judge was unsure [70] that the reduction in value was not only due to the cladding material itself regardless of whether it had leaked.
5. [71] Stigma may have more relevance in a depressed market.

6. [72] Significantly stigma may be reduced by changing the cladding material (this is now common).
7. Irrespective of all that the stigma claim was dismissed.

References

Arens, S. (1997), "The Valuation of Defective Properties: A Common Sense Approach", *The appraisal Journal*, Vol. 65 No. 2, pp. 143-148.

Rehm, M (2008), *Judging a House by its Cover: Leaky Building Stigma and House Prices in New Zealand*, Unpublished (at that time) research paper, University of Auckland, Auckland, New Zealand

Song, S. (2003) *An analysis of Leaky Home Stigma Impacts on Residential Property Values*. Unpublished Master Dissertation, Massey University, Palmerston North, New Zealand.

Weathertight Homes Tribunal - TRI 2008-100-000001 Richard & Renee Sell and Kenneth Harris and Auckland City Council and Or's - 13 May 2009.

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