

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Ghama v Crew & Anor* [2020] QCAT 149

PARTIES: **JASON GHAMA**
(applicant)

v

JENNIFER CREW

and

**THE TRUSTEE FOR THE CREW FAMILY TRUST
T/AS PRECISION MAINTENANCE SPECIALISTS**
(respondents)

APPLICATION NO/S: BDL197-18

MATTER TYPE: Building matters

DELIVERED ON: 11 May 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS:

- 1. Jennifer Crew and the Trustee for the Crew Family Trust t/as Precision Maintenance Specialists jointly and severally pay to Jason Ghama the sum of \$57,834.00; and**
- 2. Jennifer Crew and the Trustee for the Crew Family Trust t/as Precision Maintenance Specialists jointly and severally pay to Jason Ghama costs of \$338.20.**

CATCHWORDS: DAMAGES – MEASURE AND REMOTENESS OF DAMAGES IN ACTIONS FOR TORT – MEASURE OF DAMAGES – DAMAGE TO LAND AND BUILDINGS – where unlicensed builder – where no signed contract – where builder did not complete works – where defective work – where Tribunal may consider informal agreement in claim for negligence – where builder had duty to take reasonable care in performing work – where purpose of damages in tort is to calculate the pecuniary sum which will make good, so far as money can do, loss suffered – where costs to rectify and complete directly attributable to builder performing work without licence, without due care and skill, not to proper standard or at all, without authorisation and supplying and using materials not fit for purpose – where

consequential losses too remote or not fully substantiated
– where costs limited to filing fee

Queensland Building and Construction Commission Act 1991 (Qld), s 42, s 77, Schedule 1B, Schedule 2

A L Builders Pty Ltd v Fatseas (No 2) [2014] QCATA 319

Admiralty Commissioners v SS Valeria [1922] AC 242

Barbi v Brewer [2013] QCAT 348

Bellgrove v Eldridge (1954) 90 CLR 613

Bryan v Maloney (1995) 182 CLR 609

Caltex Oil (Australia) Pty Ltd v The Dredge 'Willemstad' (1977) 136 CLR 529

Clarke v Cascade Pools (Qld) Pty Ltd [2010] QCAT 323

Faulks v New World Constructions Pty Ltd (No 2) [2014] QCAT 329

Hitchman v Prime Building & Pest Consultants Pty Ltd (No 2) [2016] QCAT 476

Marshall v Marshall [1991] 1 QdR 173

Robinson v Harman [1848] EngR 135

Voli v Inglewood Shire Council (1963) 110 CLR 74

Yongwoo Park v Betaland Pty Ltd [2017] QCAT 228

REPRESENTATION:

Applicant: Self-represented

Respondents: Self-represented

APPEARANCES:

This matter was heard and determined on the papers pursuant to section 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

What is this Application about?

- [1] Jason Ghama paid \$10,700.00 to Jennifer Crew and the Trustee for the Crew Family Trust t/as Precision Maintenance Specialists (PMS) for renovations on his home. Unfortunately for Mr Ghama, he did not sign a contract with PMS, who is not licensed and did not complete the work.
- [2] PMS did not file a response to the claim or engage with the Tribunal process.

What are the issues for the Tribunal to decide?

- [3] In considering Mr Ghama's application, the Tribunal must decide these issues:
- (a) Is PMS liable to Mr Ghama?
 - (b) Can Mr Ghama recover damages due to PMS's breach of duty?

- (c) Can Mr Ghama recover consequential damages?
- (d) Can Mr Ghama recover costs?
- (e) What are the appropriate orders?

Is PMS liable to Mr Ghama?

[4] The work agreed to be performed by PMS is ‘reviewable domestic work’.¹ The application relates to the performance of that work.² The Tribunal may therefore award damages, interest thereon, restitution and costs.³

[5] Mr Ghama relied upon a Quote,⁴ a bank receipt and text messages as evidence of his contract with PMS. Because the contract did not comply with formal statutory requirements including signing by all parties, it has no effect.⁵ However, the Tribunal has recognised⁶ that it may still consider an informal agreement in any claim for negligence:

The fact that the law recognises the existence of concurrent duties in contract and tort does not mean that the existence of a contractual relationship is irrelevant to either the existence of a relationship of proximity or the content of a duty of care under the ordinary law of negligence. In some circumstances, the existence of a contract will provide the occasion for, and constitute a factor favouring the recognition of, a relationship of proximity...⁷

[6] By agreeing to perform the work and partly performing the work, PMS owed Mr Ghama a duty to take reasonable care in performing the work.⁸

[7] Mr Ghama filed written and photographic evidence⁹ of the following breaches of PMS’s duty to take care:

- (a) Failing to supply all materials;
- (b) Incomplete work;
- (c) Work and materials not meeting acceptable standards; and
- (d) Unauthorised electrical work.

¹ *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 2 definition of ‘reviewable domestic work’.

² ‘Domestic building work’ includes the renovation, alteration, extension, improvement or repair of a home and associated work – *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 1B s 4.

³ *Queensland Building and Construction Commission Act 1991* (Qld), s 77(3), Schedule 2 definition of ‘domestic building dispute’.

⁴ Quote dated 9 August 2017; Receipt dated 26 September 2017; Text messages dated 3 and 4 October 2017.

⁵ *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 1B ss 13, 14.

⁶ *Barbi v Brewer* [2013] QCAT 348, [10].

⁷ *Voli v Inglewood Shire Council* (1963) 110 CLR 74 (Windeyer J).

⁸ *Bryan v Maloney* (1995) 182 CLR 609, [14].

⁹ Application for domestic building dispute filed 3 June 2019, Documents 2, 3, 7, 8, 10, 11, 15.

- [8] The Tribunal is satisfied that Mr Ghama has established that PMS breached its duty of care owed to him in performing the work and that PMS is liable to Mr Ghama for damages as a result of its breach of duty.

Can Mr Ghama recover damages due to PMS's breach of duty?

- [9] The purpose of damages in tort is to calculate the pecuniary sum which will make good to Mr Ghama, so far as money can do, the loss which he has suffered.¹⁰
- [10] Because PMS is unlicensed, it is not entitled to payment for the work.¹¹ PMS has the onus to make a statutory claim for reasonable remuneration for performing the work.¹² PMS did not make any claim and did not engage with the Tribunal process. It is therefore not entitled to any remuneration for the work done. Mr Ghama is entitled to recover the full amount of \$10,700.00 he paid to PMS as an unlicensed builder.¹³
- [11] Because PMS's work caused deprivation or destruction, Mr Ghama is also entitled to replacement and repair costs of \$46,721.00.¹⁴ On the basis of the uncontested material filed by Mr Ghama, the Tribunal is satisfied the costs to rectify and complete the house are directly attributable to PMS performing the renovation work without a builder licence or qualifications, failing to perform the work with due care and skill, failing to complete the work to a proper standard or at all, performing work without authorisation and supplying and using materials not fit for the purpose.
- [12] The Tribunal is satisfied the costs of \$46,721.00 to rectify and complete the work are necessary and reasonable.¹⁵
- [13] Damages are therefore calculated at \$57,421.00.

Can Mr Ghama recover consequential damages?

- [14] Mr Ghama also claimed consequential damages of \$14,379.91. The below table is a summary of the consequential damages and supporting evidence.

Description	Supporting Document
Flights for pre-contract quotes & measurements, change locks, repair quotes and ongoing inspections, renovations & maintenance (\$833.41) plus airport parking (\$81.50)	Booking Confirmations dated various
New door locks (\$413.00)	Invoice No. MJD 5450 of Pronto Locksmiths dated 10 January 2017 (sic)

¹⁰ *Admiralty Commissioners v SS Valeria* [1922] AC 242.

¹¹ *Queensland Building and Construction Commission Act* 1991 (Qld), s 42(3).

¹² *Queensland Building and Construction Commission Act* 1991 (Qld), s 42(4); *Yongwoo Park v Betaland Pty Ltd* [2017] QCAT 228, [21].

¹³ *Marshall v Marshall* [1991] 1 QdR 173, 176.

¹⁴ *Murphy v Brown* (1985) 1 NSWLR 131; *Wheeler v Riverside Coal Transport Co. Pty Ltd* [1964] QdR 113; Proposal of Smith & Sons dated 20 November 2018.

¹⁵ *Bellgrove v Eldridge* (1954) 90 CLR 613.

	for \$154.00 Receipt of Bunnings dated 10 January 2018 for \$259.80
Leave from work to check past and future renovations (\$7506.53)	Leave Details Pay Slip dated October 2017
Lawn maintenance (\$490.00)	Bundle of receipts dated various
Car hire past and future (\$1046.07)	Bundle of receipts dated various
Petrol past and future (\$579.62)	Bundle of receipts dated various
Accommodation past and future (\$3230.00)	Docket date obscured for \$70.00
PO Box (\$184.25)	Bundle of receipts dated various

- [15] Consequential damages are not recoverable if too remote in fact or law.¹⁶ Moreover, they must be substantiated:

... the tribunal cannot make assumptions or guess at facts and events or the meaning or importance of material. The tribunal cannot make findings of facts where there is no evidence. It cannot award damages if there is no material that points to the quantum of the damage suffered. Parties must take responsibility for the preparation of their own case.¹⁷

- [16] Flights, airport parking, petrol and accommodation costs are not recoverable because Mr Ghama's distance from the house is not attributable to PMS's negligence. Many of these costs were also not fully substantiated.
- [17] Car hire costs are not recoverable because Mr Ghama's distance from the house is not attributable to PMS's negligence and it was and will be Mr Ghama's choice to hire a car. Many of these costs were also not fully substantiated.
- [18] Taking leave is not recoverable because it did not and does not necessarily arise from the negligence. It was and will be Mr Ghama's choice to take leave. Many of these costs were also not fully substantiated.
- [19] Lawn maintenance costs are not recoverable as they would have been incurred in any event. Many of these costs were also not fully substantiated.
- [20] PO Box costs are not recoverable as it is not clear whether they were incurred due to negligence or would have been incurred in any event. Mail could have been redirected to an address other than a PO Box.

¹⁶ *Caltex Oil (Australia) Pty Ltd v The Dredge 'Willemstad'* (1977) 136 CLR 529; *King v Commissioner of Railways* [1971] QdR 266; *Overseas Tankship (UK) Ltd v Miller Steamship Co. Pty Ltd* [1967] AC 617.

¹⁷ *Clarke v Cascade Pools (Qld) Pty Ltd* [2010] QCAT 323, [3].

[21] New door locks were necessary because Ms Crew unlawfully entered the property. They were reasonably incurred, substantiated and recoverable.

[22] Mr Ghama is therefore entitled to consequential damages of \$413.00.

Can Mr Ghama recover costs?

[23] Mr Ghama also claimed costs of \$444.96, including \$106.76 printing costs.

[24] The general rule in building disputes is that a successful party is entitled to recover its costs from the other party.¹⁸ However, preparation costs – including printing costs – incurred by self-represented parties in the Tribunal are not recoverable.¹⁹

[25] Mr Ghama did incur a fee of \$338.20 to file the Application. As he incurred this fee to prove his claim, I consider it in the interests of justice to award him the filing fee.²⁰

What are the appropriate orders?

[26] The appropriate orders are that:

1. Jennifer Crew and the Trustee for the Crew Family Trust t/as Precision Maintenance Specialists jointly and severally pay to Jason Ghama the sum of \$57,834.00; and
2. Jennifer Crew and the Trustee for the Crew Family Trust t/as Precision Maintenance Specialists jointly and severally pay to Jason Ghama costs of \$338.20.

¹⁸ *Faulks v New World Constructions Pty Ltd (No. 2)* [2014] QCAT 329, [17]; *A L Builders Pty Ltd v. Fatseas (No. 2)* [2014] QCATA 319, [4].

¹⁹ *Hitchman v Prime Building & Pest Consultants Pty Ltd (No. 2)* [2016] QCAT 476, [9].

²⁰ *Queensland Building and Construction Commission Act 1991* (Qld), s 77(3)(h).