

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Atkinson and Anor v Van Uden* [2020] QCAT 259

PARTIES: **TERRANCE ATKINSON**  
**LEONIE ATKINSON**  
(applicants)  
**v**  
**MARINUS HENDRIKUS VAN UDEN**  
(respondent)

APPLICATION NO/S: BDL110-19

MATTER TYPE: Building matters

DELIVERED ON: 18 March 2020

HEARING DATE: 28 January 2020; 10 March 2020

HEARD AT: Brisbane

DECISION OF: Member Fitzpatrick

ORDERS: **The respondent Marinus Hendrikus van Uden pay the applicants Terrance Atkinson and Leonie Atkinson damages in the sum of \$22,439.00 within 21 days of the date of this decision.**

CATCHWORDS: CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – PERFORMANCE OF WORK – REMEDIES FOR BREACH OF CONTRACT – DAMAGES – MEASURE OF – where no enforceable contract – where finding of negligent construction work open on the application and statements of evidence – where damages for negligent construction work awarded  
*Civil Liability Act* 2003 (Qld), s 9, s 11  
*Queensland Building and Construction Commission Act* 1991 (Qld), s 13(2), s 13(5), s 44, s 77(1), Schedule 1B  
*Belgrove v Eldridge* (1954) 90 CLR 613  
*Bryan v Maloney* (1995) 182 CLR 609  
*Caltex Refineries (Qld) Pty Ltd v Stavara* [2009] NSWCA 258  
*Drexel London (a firm) v Gove (Blackman)* [2009] WASCA 181  
*March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506  
*Thompson and Anor v Jedanhay Pty Ltd* [2012] QCATA 246

APPEARANCES &

## REPRESENTATION:

Applicant: Self-represented  
 Respondent: Self-represented

**REASONS FOR DECISION**

- [1] Mr and Mrs Atkinson entered into a building contract with Mr van Uden, trading as The Flying Dutchman, for the renovation of the main bathroom and an ensuite bathroom at their home at Palmwoods.
- [2] The terms of the contract and in particular the scope of work are in dispute.
- [3] Mr van Uden commenced work in April 2017 and completed work on or about 31 May 2017. The Atkinsons paid the contract price of \$8,715.00, inclusive of GST plus a further \$1,650.00, inclusive of GST for further work. Before work commenced a deposit of \$4,000.00 was paid upon the request of Mr van Uden.
- [4] The Atkinsons allege that the work is defective because the bathrooms leak and there is damage to a structural floor joist as a result of the work.
- [5] The Tribunal has jurisdiction to hear this matter as a building dispute pursuant to section 77(1) of the *Queensland Building and Construction Commission Act 1991* (Qld) ('QBCC Act'). Relevantly I am satisfied that the requirements of s77(2) of the QBCC Act have been met. Further, within the terms of Schedule 1B of the QBCC Act, the renovation work the subject of this dispute is reviewable domestic work and that there is a domestic building dispute between the applicants as building owners and the respondent as a building contractor who carried out the domestic building work.
- [6] The hearing commenced on 28 January 2020 but was adjourned part heard before the conclusion of the Atkinsons' case to enable them to locate evidence of email acceptance of Mr van Uden's 11 March 2020 quotation for the performance of work.
- [7] The hearing was resumed on 10 March 2020 at which time Mrs Atkinson advised the Tribunal that no such email could be located and that the quotation must have been accepted orally.
- [8] Mr and Mrs Atkinson attended the hearing in person on 28 January 2020. Mr van Uden attended by telephone from a work-site. On 10 March 2020 Mrs Atkinson attended in person and Mr van Uden again attended by telephone from a work-site.

**The Claim**

- [9] Mr and Mrs Atkinson claim the sum of \$11,461.00 for the cost of repairing the main bathroom and the sum of \$10,978.00 for the cost of repairing the ensuite. The amounts claimed reflect estimates for repair work provided by One Stop Construction Group, dated 25 August 2019. The Owner and Director of that business Mr Mendonca provided a statement filed in the Tribunal on 4 December 2019<sup>1</sup> to the effect that the estimate was provided following a site inspection. Mr Mendonca says that the estimate was prepared on the basis of his knowledge and coincided with the QBCC rectification reports. Mr Mendonca states that due to

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<sup>1</sup> Statement of Marcio Mendonca dated 22 November 2019 – Exhibit 4.

continued use of the bathrooms more water leaking will have caused more structural damage and that repair work is urgent.

### **The Contract**

- [10] Mr and Mrs Atkinson assert that the contract with Mr van Uden was formed as follows:
- (a) on 12 March 2017 a quotation dated 11 March 2017 was emailed to them by Mr van Uden;
  - (b) on a date and time unknown, but before 9.26 am on 13 March 2017 the quotation was accepted; and
  - (c) on 13 March 2017 at 9.26 am Mr van Uden emailed the Atkinsons stating: 'Thank you for accepting quote. I can start beginning next week if you like...'
- [11] The work the Atkinsons say was to be performed by Mr van Uden, is set out in the quotation of 11 March 2017,<sup>2</sup> which noted that both bathrooms had leak problems and that it was necessary to re-install the whole bathroom and ensuite to prevent leaking and movement in the future. The work for both rooms included removing tiles and re-tiling, new underlay tiled floor installed, whole bathroom floors and walls to be waterproofed as per Australian Building Regulations 2006, installing a larger shower waste and re-installing sink cabinet, shower cabin and in the ensuite re-installing the toilet.
- [12] The quotation says for both the master bathroom and the ensuite:
- Shower cabin, cabinet, tiling, waterproofing will be installed by 'The Flying Dutchman'
- Painting is Not included
- Installing tiles, tile glue, grouting, finished will be performed by 'The Flying Dutchman'
- All taps, shower heads etc will be re-installed when tile job is done.
- [13] Mr van Uden asserts that the work to be performed is not reflected in the quotation. He says that the quotation established the price and that subsequently an agreement was provided to the Atkinsons setting out the agreed work, however, they did not sign the agreement.
- [14] Mr van Uden was not clear as to what document is said to constitute the agreement. Mr van Uden did not file any document alleged to be the agreement he refers to.
- [15] Mr van Uden maintains that it was agreed Mr Atkinson would do all painting, electrical work and plumbing on the job and that did not fall within his scope of work.
- [16] That position is reflected in a document which the Atkinsons say first came to their attention when they received an email from Ms Tyler, Acting Senior Internal Review Officer, Queensland Building and Construction Commission ('QBCC'),

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<sup>2</sup> Attachment 1 to the statement of Mr and Mrs Atkinson filed 12 September 2019 – Exhibit 3.

dated 9 November 2018. That email attached a quotation from Mr van Uden dated 14 March 2017.<sup>3</sup>

- [17] The quotation differs from the 11 March 2017 quotation in a number of respects. The introductory part of the quotation is different. It now says: ‘No maintenance is needed on floorboards or any work underneath house as required by Terry’. Only the main bathroom is said to require re-installation.
- [18] A number of items of work are said in the 14 March 2017 quotation to be performed by a plumber arranged by Mr Atkinson (Terry). In particular the following words are added to items of work in the master bathroom and the ensuite:
- Shower base, vanity and toilet done by Terrance.
- All Electrician, Plumbing and Painting arranged and performed by Terry
- This include: Connecting/installing shower base, vanity, toilet in ensuite, taps, plumbing, waterwaste underneath house.
- [19] Installation of larger shower wastes and re-installation of ‘taps, shower-heads etc’ are said to be performed by a plumber arranged by Terry.
- [20] The document has provision for signing by Terry and by The Flying Dutchman and provision for a date to be inserted. That does not appear on the 11 March 2017 quotation.
- [21] It appears the 14 March 2017 quotation was provided to the QBCC by Mr van Uden as part of Mr Atkinson’s request for an internal review of a QBCC decision disallowing a claim on the QBCC home warranty insurance scheme, because he was out of time to lodge the claim.
- [22] Mr van Uden asserts in his statement filed in the Tribunal on 5 July 2019 that Mrs Atkinson has ‘falsified the unsigned contract and she used this against me to the qbcc’.
- [23] Mr and Mrs Atkinson assert that Mr van Uden has provided an amended version of the quotation to the QBCC with all the plumbing requirements falling to them. They note that the 14 March 2017 quotation was dated two days after provision of the initial quote and one day after Mr van Uden thanked them for accepting the quote.
- [24] Mr and Mrs Atkinson’s evidence is that they are not builders and have no idea how to renovate a bathroom. They employed Mr van Uden to do the whole job, not part of the job. Their evidence is that they did not perform, nor did they engage any other person to perform the plumbing work. A plumber was engaged by them to install two new toilet pedestals in the ensuite and water closet. Otherwise plumbing work was left to Mr van Uden and was performed by him.
- [25] I found Mr and Mrs Atkinson to be credible witnesses. They gave their evidence in a straightforward way. They presented as ordinary home-owners without particular building skills. The exchange of emails leading to formation of the contract, attached to their statement of evidence, is evidence that the quotation dated 11 March 2017 is the quotation which they accepted and that the 14 March 2017 email, coming after acknowledgement of acceptance of the quotation does not contain terms to which they agreed.

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<sup>3</sup> Attachment 3 to the statement of Mr and Mrs Atkinson filed 12 September 2019 – Exhibit 3.

- [26] I do not accept Mr van Uden's evidence that the 11 March 2017 quotation was provided only with respect to price and that a later agreement was entered into, but not signed.
- [27] Even allowing for the difficulty of attending a hearing by telephone, Mr van Uden frequently shouted over the top of me and Mrs Atkinson. Mr van Uden would not answer questions put to him in cross-examination, preferring to repeatedly shout that there was no evidence he had not installed waterproofing. Mr van Uden was granted the indulgence of attendance at the hearing by telephone. However throughout the hearing he appeared disrespectful of the process. It was apparent to me that Mr van Uden was at times distracted by giving evidence on a work-site. I could hear him speaking to other persons whilst the hearing progressed. Mr van Uden chose to participate in the hearing without having to hand any of the documents he filed in the Tribunal. Overall, I did not find Mr van Uden a credible witness.
- [28] For this reason I prefer the evidence of the Atkinsons. I also consider that the email chain in relation to formation of the contract referred to earlier, is inconsistent with Mr van Uden's assertion in relation to an agreement with different terms to those set out in the quotation of 11 March 2017. I find that the contract comprises the quotation dated 11 March 2017 accepted orally by the Atkinsons. I find that the work agreed to be performed by Mr van Uden is set out in that quotation.
- [29] The further works performed by Mr van Uden are not the subject of any dispute and I will not refer to the contractual basis for those works.
- [30] The contract is a level 1 regulated contract within the terms of Schedule 1B of the QBCC Act.
- [31] A difficulty for Mr and Mrs Atkinson is that the contract does not conform to the requirements of section 13(2) of the QBCC Act. The contract is not dated and signed by or on behalf of each of the parties to it. By section 13(5) of the QBCC Act, the contract only has effect if it complies with subsection (2). However, by section 44 of the QBCC Act this failure does not make the contract illegal or void.
- [32] The effect of the contract being unenforceable is that the Atkinsons do not have available to them a claim for damages for breach of contract.
- [33] However the Atkinsons have cast their claim broadly as a claim for damages. Their statement and other material filed in the Tribunal refers to badly performed work. On this basis they have sufficiently raised a claim for damages for negligently performed work.<sup>4</sup>

### **Defective Work**

- [34] Attachment 5 to the statement of Mr and Mrs Atkinson (exhibit 3 in the proceedings) is an initial inspection report prepared by a QBCC Inspector, dated 4 October 2018.
- [35] The Inspector notes that Mr van Uden advised him that he did not complete plumbing connections and he considers all leakage is caused by plumbing work completed by others.

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<sup>4</sup> *Thompson and Anor v Jedanhay Pty Ltd* [2012] QCATA 246, [22]: the Tribunal generally derives the issues to be determined from the statements of evidence of the parties.

[36] The Inspector noted the following from his visual inspection and non-invasive testing of the main bathroom:

- (a) significant leakage from the main bathroom.
- (b) Structural floor joist compromised as a result of the pre-formed shower base installation in the main bathroom. The floor joist has been completely cut to allow installation of the waste pipe. The bathroom floor has inadequate support.
- (c) Wall tiles may not have been installed correctly over the pre-formed shower base upstand/lip. Invasive investigation could confirm the as-constructed detail.
- (d) Water leaks from around the shower waste and from underneath the shower base. Failure has occurred in several locations, including the junction of the shower wall and floor. Visual inspection noted water staining evident to the plywood flooring at the bathroom vanity drainage pipe indicating a failure of the waterproofing membrane to the bathroom floor.
- (e) The extent of staining indicates water is leaking from within the shower enclosure and underneath the bathroom floor tiles.
- (f) Water leakage evident from the base of the shower screen.

[37] The Inspector concluded in relation to the main bathroom that installation of the pre-formed shower base, wall lining, waterproofing membrane, wall and floor tiles and shower screen to the main bathroom is not in accordance with the Building Code of Australia, AS3740-2010, or acceptable building practice in that floor framing has been compromised and water leakage occurs causing damage to various building elements.

[38] In relation to the ensuite, the Inspector noted:

- (a) there is a dispute as to whether existing damaged particleboard floor sheeting would be replaced in the ensuite. The particleboard has not been replaced. Damaged flooring requires replacement.
- (b) Efflorescence and discoloured grout is evident on the floor tiles throughout the room indicating the adhesive/bedding underneath the floor tiles is waterlogged.
- (c) Visual inspection noted an inadequate and defective waterproofing detail at the ensuite bathroom doorway, in that the waterstop angle has not been finished flush with the tiled floor surface.
- (d) A non-invasive water test revealed moisture in several locations of the tile grout on the ensuite floor, water leakage evident in the subfloor area under the ensuite, water leaking from two separate locations of the flooring, not in the vicinity of the shower waste.
- (e) Water testing indicates that the junction of the shower wall tiles and shower base is defective, allowing water leakage.
- (f) Water is escaping the shower cubicle (under tiles and/or shower tray) and tracking under the bathroom floor tiles.

- (g) The waterproofing membrane to the ensuite floor is defective and has failed with visible leakage underneath the flooring in two separate locations.
  - (h) Water leakage is evident from the base of the shower screen as a result of a static water test.
- [39] It was concluded that installation of the pre-formed shower base, wall lining, waterproofing membrane, wall and floor tiles and shower screen to the ensuite bathroom is not in accordance with the Building Code of Australia, AS 3740-2010, or acceptable building practice allowing water leakage and causing damage to various building elements.
- [40] As a result of the Inspector's report, the QBCC issued a Direction to rectify to Mr van Uden as follows:
- (a) The installation of the pre-formed shower base, wall lining, waterproofing membrane, wall and floor tiles and shower screen to the main bathroom is not in accordance with the Building Code of Australia, AS3740-2010, or acceptable building practice in that floor framing has been compromised and water leakage occurs causing damage to various building elements.
  - (b) The installation of the preformed shower base, wall lining, waterproofing membrane, wall and floor tiles and shower screen to the ensuite bathroom is not in accordance with the Building Code of Australia, AS 3740-2010, or acceptable building practice, allowing water leakage and causing damage to various building elements.
- [41] As at the date of the hearing the work has not been rectified in accordance with the direction.
- [42] Mr van Uden asserts that he is being falsely accused of not installing waterproofing. I do not think that is what the Atkinsons assert. Photographs in the QBCC report do show some waterproofing protruding from the back of tiles. The Atkinsons adopt the QBCC report as evidence of defective work.
- [43] Mr van Uden says that he advised Mr Atkinson when the shower tube was ready to be installed so that Mr Atkinson could attend to the work. The work was done the same day. Mr van Uden said he observed that nothing was sealed around the waste pipe and no finishing caps were used. Connections were cut roughly and glue was all over the place. He doubted if the work had been done by a licensed plumber but said that it was not his concern. Mr van Uden asserts that Mr Atkinson did his own plumbing work to save cost. He says that when a new shower base was chosen the drain hole for waste was not in the same position as the old base, so it was necessary to drill a new hole. He assumes the hole was cut through structural floorboards and through Mr van Uden's waterproofing membrane. The old drain hole was not waterproofed or closed correctly and a very poor job was done with the new drain waste pipe.
- [44] I find it improbable that a licensed builder would note defective work, including work which by his explanation damaged his own work, and take no steps to ensure it was rectified or even bring it to the attention of the home owner. I do not accept Mr van Uden's explanation for how the plumbing work came to be performed.
- [45] Mr van Uden says that after the work was complete and paid for he returned at Mr Atkinson's request and noted in the main bathroom that sealant had been 'ripped

off underneath the tiles. Mr van Uden asserts Mr Atkinson said he removed the sealant to clean it. Mr van Uden says that he installed new sealant for no charge. A few days later he returned to the house and installed covering on the beams to cover up leaking spots underneath the main bathroom area. He went inside the home and tested for water leaks and noted that there were none. This evidence is supported by a statement from Mr van Niekerk, general manager for administration from The Flying Dutchman business. Mr van Niekerk was not called to give evidence.

- [46] The Atkinsons deny that Mr Atkinson ripped off the silicon sealant in the main bathroom. They say that they did not install the shower base and did not approve the covering of water leaks evident from under the house. Further they did not authorise Mr van Uden to enter the house to conduct a water test as they were both at work that day. I accept the evidence of the Atkinsons.
- [47] The quotation of 11 March 2017 expressly provides that The Flying Dutchman will re-install the whole bathroom and ensuite to prevent leaking and movement in future. The quotation expressly provides that The Flying Dutchman will install the shower cabin, cabinet, tiling and waterproofing in both the main bathroom and the ensuite. Because a shower base is not referred to anywhere else in the quotation I find that the shower cabin must include the shower base. I find that ‘installation’ of the shower cabin, includes installation of plumbing associated with the base of the cabin. I find that is the work Mr van Uden agreed to perform. I do not accept the allegation that Mr Atkinson was responsible for or in fact installed the waste pipe associated with the shower base in the main bathroom.
- [48] I find that because the Atkinsons did not perform any plumbing work (other than engaging a plumber to install toilets) and because Mr van Uden was responsible for all work referred to in the quotation dated 11 March 2017, he did in fact perform all plumbing work associated with installation of the bathrooms.
- [49] Mr van Uden does not address any other item of defective work described in the QBCC report other than the plumbing associated with installation of the waste pipe in the main bathroom. Mr van Uden does, however, attack the Inspector as not being an accredited certifier and asserts that the QBCC report is illegal. I do not accept that submission. The QBCC report is an official document prepared by an employee on its behalf. The Inspector was not fulfilling the function of a certifier when he inspected the work and provided a report. The Inspector was performing a function to meet an object of the QBCC Act, that is, the maintenance of proper standards in the industry. As a consequence of the QBCC’s inspection Mr van Uden was issued with a Direction to Rectify. I note that Mr van Uden withdrew his application for review of the decision giving rise to the Direction. That would have been an appropriate forum to raise his contention. He did not do so.
- [50] Mr van Uden did not require the Inspector to be present for cross-examination. I accept the report of the QBCC as evidence of the results of visual inspection and non-invasive water testing conducted by the Inspector. I find that the work performed by Mr van Uden was defective in the terms described in the report.

#### **Elements of a claim in negligence**

- [51] To establish an entitlement to damages for negligent building work, the following elements must be present:
- (a) a duty of care owed by Mr van Uden to the Atkinsons;

- (b) that the duty of care was breached;<sup>5</sup>
- (c) damage which is not too remote has been suffered by the Atkinsons as a consequence;<sup>6</sup> and
- (d) any defence to the claim has been rebutted.

- [52] The relationship of professional licensed builder to a homeowner client is an established category of relationship where a duty of care is owed. That is because it is reasonably foreseeable that if care is not taken by the builder the client is likely to suffer loss and damage. The owner of a house, in the absence of evidence to the contrary, may be assumed to rely on a professional builder to carry out the work with care and skill and the builder generally accepts the responsibility arising from that reliance.<sup>7</sup>
- [53] I find that Mr van Uden owed a duty of care to the Atkinsons to perform the agreed work with all reasonable care and skill and to the standard to be expected of a licensed contractor. That standard included performing the work in accordance with the relevant Building Code of Australia.
- [54] I find that the work performed by Mr van Uden was defective and not to the standard of a licensed contractor, nor was it in accordance with the Building Code of Australia.<sup>8</sup> That finding is consistent with the observations and conclusions set out in the QBCC report.
- [55] On this basis I find that Mr van Uden has breached his duty of care to the Atkinsons.
- [56] The loss and damage complained of by the Atkinsons includes their bathrooms leaking, structural damage to a supporting joist and water damage resulting in structural damage to their home. Repair work as detailed in the One Stop Construction Group quotation dated 25 August 2019 is required at a cost of \$22,439.00.
- [57] The negligent work described in the QBCC report and performed by Mr van Uden, was a necessary condition of the occurrence of harm to the Atkinsons.<sup>9</sup> That conclusion is reached on the basis that but for the negligent work the loss and damage would not have been sustained and as a matter of common sense Mr van Uden's acts were the cause of the loss and damage.<sup>10</sup> That is consistent with the conclusions in the QBCC report.
- [58] The loss and damage suffered by the Atkinsons was foreseeable at the time the defective work was performed, accordingly the loss and damage is not too remote for recovery of damages.

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<sup>5</sup> *Civil Liability Act 2003 (Qld)*, s 9, Schedule 2 (definitions of 'duty' and 'duty of care'): "duty" means a duty of care in tort; "duty of care" means a duty to take reasonable care or to exercise reasonable skill (or both duties).

<sup>6</sup> *Civil Liability Act 2003 (Qld)*, s 11.

<sup>7</sup> *Bryan v Maloney* (1995) 182 CLR 609, paras 6, 14, 18 and 19 per Mason CJ, Deane and Gaudron JJ; *Caltex Refineries (Qld) Pty Ltd v Stavar* [2009] NSWCA 258, [102]-[103].

<sup>8</sup> *Drexel London (a firm) v Gove (Blackman)* [2009] WASCA 181, [214]: breach of a statutory duty such as failing to follow a building code, while not determinative is strong evidence of negligence.

<sup>9</sup> *Civil Liability Act 2003 (Qld)*, s 11(1)(a).

<sup>10</sup> *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506, 515.

- [59] The loss and damage is serious and it is not what homeowners should expect to be the result of work performed by a licensed contractor. It is appropriate that Mr van Uden bear responsibility for the loss and damage suffered by the Atkinsons.<sup>11</sup>
- [60] Mr van Uden's defence is that he did not perform the work which caused the loss and damage. I have rejected that defence and found that he did perform the work. He has raised no other matter which would refute or reduce his liability.

### **Damages**

- [61] The object of an award of damages in tort is to restore a party such as the Atkinsons to the position they would have been in if the negligently performed building work had not occurred.<sup>12</sup> Damages may include the cost of rectification.
- [62] Evidence as to the cost of rectification comes from Mr Mendonca of One Stop Construction Shop and is set out in his statement, exhibit 4 in the proceedings. A further quote was obtained from a different building contractor, David Markwell in an amount of \$22,500.00.
- [63] When Mr van Uden was giving his evidence in chief I asked him if had anything to say about the two quotes provided by the Atkinsons in relation to the cost of rectification. Mr van Uden responded that the Atkinsons were lying.
- [64] I consider the quotation provided by Mr Mendonca should form the basis of my calculation of damages. He has provided a statement which addresses the way in which the quote was prepared and specifically links it to the QBCC report. Although Mr Mendonca was not available for cross-examination at the hearing, Mr van Uden did not raise any objection to the evidence being considered by the Tribunal other than to assert that the quote was a lie. I do not accept that assertion because no basis was given for it. No criticism was made of the amount of the quotation or its means of calculation. Given that Mr van Uden is a builder I would have expected him to do so if he thought it relevant.
- [65] I accept Mr Mendonca's evidence as to the cost of rectification and repair of the bathrooms and flooring in an amount totalling \$22,439.00 inclusive of GST. I consider the rectification to be both necessary and reasonable.<sup>13</sup>
- [66] I find that Mr and Mrs Atkinson are entitled to recover from Mr van Uden the sum of \$22,439.00 as damages for negligent work performed by him.
- [67] The application made by the Atkinsons claims interest. The award of damages is based on a quotation for the cost of repair. As the Atkinsons are yet to incur those costs, I decline to award interest.

### **Order**

- [68] I order that Mr van Uden pay to Mr and Mrs Atkinson the sum of \$22,439.00 within 21 days of the date of this decision.

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<sup>11</sup> *Civil Liability Act 2003* (Qld), s 11(1)(b) and (4).

<sup>12</sup> Damien Cremean, Michael Whitten and Michael Sharkey, *Brooking on Building Contracts* (Lexis Nexis Butterworths, 6<sup>th</sup> ed, 2020) 16.9.

<sup>13</sup> *Belgrove v Eldridge* (1954) 90 CLR 613.