

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Unique Design Qld Pty Ltd v Horner* [2019] QCAT 11

PARTIES: **UNIQUE DESIGN QLD PTY LTD**
(applicant)
v
LEE HORNER
(respondent)

APPLICATION NO/S: BDL146-18

MATTER TYPE: Building matters

DELIVERED ON: 23 January 2019

HEARING DATE: 13 December 2018

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS: **The respondent pay to the applicant the sum of \$7,065 within 14 days of order.**

CATCHWORDS: CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – THE CONTRACT – CONSTRUCTION OF PARTICULAR CONTRACTS AND IMPLIED CONDITIONS – where contract terms unclear – ambiguity – where parties entered into written contract for renovation of the bathroom – where the terms of the contract were able to be construed – whether the contract provided for a single or double shower screen door – where discussions between the parties after the contract entered into irrelevant to the construction of the contract

Hughes v St Barbara Mines Ltd [No 4] [2010] WASC
160 Ryledar Pty Ltd & Anor v Euphoric Pty Ltd [2007] NSWCA 65

APPEARANCES &
REPRESENTATION:

Applicant: Self-represented by Michael Peacock

Respondent: Self-represented

REASONS FOR DECISION

- [1] Unique Design Qld Pty Ltd, a building company ('the builder'), was engaged by Mrs Horner to do renovation work on her bathroom. Part of the renovation included installing a new glass shower screen to screen off both a shower and toilet cubicle.
- [2] The parties signed a contract on 11 January 2018. The cost of the work was agreed at \$24,450. A number of variations were also subsequently agreed and the bathroom work was done by early April 2018.
- [3] The shower and toilet were both at the end of the bathroom, separated by a glass panel. The shower screen was comprised of 2 fixed end panels, one approximately 400 mm wide fixed to the wall next to the toilet and the other approximately 600 mm wide fixed to the wall near the shower. A sliding glass panel approximately 700 mm wide slid between the 2 fixed panels. When one used the shower the sliding screen door was pushed to the fixed 600 mm glass panel to screen off the shower cubicle. When the toilet at the other end was in use, the shower screen door was pushed the other way up against the fixed 400 mm glass panel fixed to the wall near the toilet.
- [4] The builder described the configuration as a barn style sliding glass door system.
- [5] Given the single sliding glass door, one could not close off both the shower and the toilet at the same time. After the installation Mrs Horner objected to that. She wanted to be able to partition off both the shower and the toilet at the same time.
- [6] She refused to pay the balance owing for the work of \$7,065. The builder commenced domestic building dispute proceedings in the Tribunal to recover that outstanding amount.
- [7] Mrs Horner says the barn style sliding glass door system was not what she thought would be supplied under the contract.
- [8] Mr Peacock of the applicant building company says he explained it to Mrs Horner when he was at her home in January 2018 estimating for the job. He says he discussed it with her in some detail. He showed her a Google search showing the mechanism of the single barn door style slider system. Mrs Horner denies that. She says that what she wanted was both the shower and the toilet to be able to be panelled off at the same time.
- [9] The shower screen system was installed by Mr Wighton who was a sales agent for the supplier of the glass products, Glass Projects.
- [10] He said at the hearing he explained to Mrs Horner how the single sliding shower screen would work. The single sliding shower screen would either close off the shower area or close off the toilet area. There couldn't be two sliding doors to close off each area because of the weight of the glass. To support that weight the structure would have to be attached to the ceiling. Her ceiling was not suitable. It was a suspended ceiling. He said he had two conversations with her on-site and he explained exactly what was to be done and she gave the impression she understood.
- [11] It was put to him by Mrs Horner that she had obtained quotations from other contractors to put in a double glass door system. He said he could not comment on

that because there was not enough information in the quotations to explain how they could do that.

- [12] Mrs Horner put to him that one of the contractors suggested a louvre or ‘shutter like’ system. He said he had been doing this work for over 30 years and had never heard of such a system for shower screens. He said a frameless glass shower screen slides on one top rail. The glass is very heavy. In his experience it would be impossible to run 2 frameless glass shower screens on the one top rail – not without significant additional work hanging it from the ceiling.
- [13] Mr Batt, Mr Wighton’s employer from Glass Projects, also gave evidence. He said he attended on site with Mr Wighton and the single sliding door configuration with one door sliding from side to side and closing off either the shower or toilet cubicle but not both at the same time had been explained to Mrs Horner by both of them before his company had installed it. He said she seemed to understand what was said.
- [14] Mrs Horner gave evidence. She said she had wanted two doors. That was what she thought she was getting. She was adamant none of the tradesmen installing the shower screen explained to her that she would end up with one sliding door and that she couldn’t close off both the toilet and the shower at the same time.
- [15] She said a different tradesman who was putting in her kitchen shortly after this, had quoted to replace the applicant’s shower screen. He quoted to replace it with an aluminium channel screwed to the ceiling with the doors hanging from it. She said she had also obtained a quotation from O. A. Plumbing & Bathrooms who quoted to supply and install a frameless shower screen with frosted glass and two sliding doors for the toilet and shower area, showing that it could be done.
- [16] Finally a friend of Mrs Horner, Mr Ryan, gave evidence. He said he was present in the apartment when the tradesmen were there discussing installation. He said they seemed confused about how the system would work and he recalls Mrs Horner leaving the bathroom and shortly after that one of them saying it could not be done as the plan stated. They continued their discussions and he left the apartment.

The Contract

- [17] The contract was signed on 11 January 2018. Each page of the documents comprising the contract bears the signature of both contracting parties. It is comprised of contract terms and conditions, a list of the products included in the price, two ‘Articad’ drawings and a measurement plan.
- [18] The rights and obligations of parties to a contract are established and limited by the written terms of the contract. Courts and tribunals have the responsibility of construing the terms of a written contract so as to discover the intention of the parties from the words used.¹
- [19] To do that one starts with the contract, one doesn’t start with discussions between the parties after the contract is executed and then in light of those discussions argue about what the terms mean. As explained in *Ryledar Pty Ltd & Anor v Euphoric Pty Ltd* [2007] NSWCA 65:

¹ *Hughes v St Barbara Mines Ltd [No 4]* [2010] WASC 160, [594].

[31] ... The Court does not, once it has found the commonly known factual context and purpose, then look at the words of the contract and, if they do not readily accommodate the context and purpose so found, force them to do so by a process of interpretation.

[32] When the Court is construing a commercial contract, it begins with the words of the document: there it often finds expressed the factual context known to both parties and the common purpose and object of the transaction...²

[20] The evidence of both parties in this matter concentrated on the discussions between the parties that took place after the contract was entered into. However the common purpose and object of the transaction is discernible from the contract document itself.

[21] Clause 1 of the contract terms and conditions provides:

I understand the the (sic) bathroom plan we have agreed upon is a graphical representation only and that images in it may not be an accurate representation of the products we have chosen.

[22] The list of products included in the price refers to a 'custom frameless shower obscure glass as per plan'. It refers to one of those in the column about quantity.

[23] One of the Articad drawings does depict, I conclude, a single sliding door hanging from 2 wheeled supports on a top rail and a fixed panel of glass adjacent the single sliding door. The fixed panel is different from the door in that it shows no wheeled supports on top and it has no framed edge at the bottom whereas the door does.

[24] The other Articad drawing shows the single sliding door with the 2 wheeled supports on top and two fixed panels on either side. Superimposed over the glass panels in the drawing are the words 'remove old glas (sic) doors and replace obscure glass sliding door'. The same words are to be found superimposed over the measurement plan.

[25] The Articad drawings and the measurement plan are not entirely satisfactory insofar as they could well be clearer however I note clause 1 of the contract terms and conditions says that the bathroom plan agreed upon is a graphical representation only and images in it may not be an accurate representation of the products chosen by the customer.

[26] In both the Articad drawing and the measurement plan what was to be removed are referred to as old glass 'doors' and their replacement as an 'obscure glass sliding door' in the singular.

[27] I conclude the contract specified one screen door would be supplied under the contract, that the screen would be frameless and there was no provision made for hanging doors from the ceiling.

[28] In those circumstances I conclude Mrs Horner has been supplied with the product she contracted for with the builder.

[29] Insofar as it is necessary I also determine that I prefer the evidence of the parties giving evidence for the builder where it conflicts with that of Mrs Horner. Mrs Horner may well not have understood the explanation offered however I conclude the tradespeople

² [2007] NSWCA 65, [31]-[32].

associated with the builder did explain to her on the occasions claimed (after the parties had already entered into the contract) that the configuration of the shower screen was intended to close off either the shower or the toilet cubicle at any one time but not both, and that only one door would be used.

- [30] Concerning Mr Ryan's evidence, he may have heard a comment by one of the tradesmen about some aspect of the construction not working to plan, however he could not say what particular thing could not be done "to plan".
- [31] Finally, whilst Mrs Horner has obtained quotations for the replacement of the builder's single sliding door by a two door configuration, under the contract she had agreed that the builder was to supply a single screen door only.
- [32] In these circumstances the builder is entitled to be paid for the balance of his contract.