

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Manlangit and Hatton v Gnocco* [2020] QCAT 14

PARTIES: **ANGELITA MANLANGIT AND JAY MICHAEL HATTON**
(applicants)
v
PETER VIRGINIO GNOCCO
(respondent)

APPLICATION NO: BDL261-18

MATTER TYPE: Building matters

DELIVERED ON: 13 January 2020

HEARING DATE: 19 July 2019

HEARD AT: Townsville

DECISION OF: Member Pennell

ORDERS: **1. That the respondent must pay to the applicants the amount of \$9,596.16 by 4:00pm on 27 March 2020.**

2. That the respondent's counter claim is dismissed.

CATCHWORDS: CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – DAMAGES – MEASURES OF – LEGALITY – oral contract between building owner and building contractor – where the building contractor was unlicensed — where the building contractor performed unlicensed building work – where the building contractor was not entitled to consideration for undertaking that building work – assessment of damages against an unregistered building contractor

TORTS – NEGLIGENCE – ESSENTIALS OF ACTION FOR NEGLIGENCE – DUTY OF CARE – SPECIAL RELATIONSHIP AND DUTIES – where there was a vulnerable homeowner – whether the unlicensed builder owed a duty of care to homeowner – damages payable where work is defective

Queensland Building and Construction Commission Act 1991 (Qld), s 7, s 28, s 30, s 31, s 34, s 42, Schedule 1A, Schedule 1B, Schedule 2

Queensland Civil and Administrative Tribunal Act 2009

(Qld), s 28

Cook's Construction P/L v SFS 007.298.633 P/L (formerly trading as Stork Food Systems Australasia P/L) [2009] QCA 75

Marshall v Marshall [1999] 1 Qd R 173

APPEARANCES & REPRESENTATION:

Applicants: Self-represented

Respondent: Self-represented

REASONS FOR DECISION

Introduction

- [1] After making several enquiries in the Townsville area to engage the services of a tradesman to undertake work at their investment property,¹ the applicants contacted the respondent.² Within a matter of days, the respondent sent two emails to the applicants setting out his quote for painting their house, along with replacing the kitchen bench top and some renovations to the bathroom.³
- [2] The applicants requested a formal tax invoice from the respondent. He sent two separate emails titled 'Tax invoice' which contained the tax invoices.⁴ Those tax invoices indicated the scope of works would relate to the internal painting of ceiling, walls, doors and frames, including the supply of the paint. The amount quoted by the respondent was \$3,100.00, inclusive of GST. There were further telephone conversations between the parties⁵ where the applicants told the respondent that they would engage him to undertake the scope of works as provided in his quote. He said that the scope of works should not take any longer than two weeks to complete.
- [3] The respondent provided a further tax invoice that related to the scope of works for the bathroom of the house, and included removing the bathtub, the wall sheeting and the vanity. Further work was to be undertaken to install a new tap combination, a new shower and screen as well as a new vanity. Waterproofing was to be undertaken on the floor. The respondent quoted an estimate amount of between \$3,500 - \$4,500 for the work to the bathroom⁶ Overall, the amount quoted by the respondent for the scope of works ranged between \$6,600 to \$7,600 inclusive of GST.

¹ Located in the suburb of Oonoonba.

² On or about 28 June 2018.

³ Applicants' affidavit filed 25 March 2019 at Annexure 'A'.

⁴ Applicants' affidavit filed 25 March 2019 at Annexure 'B'.

⁵ On 3 July 2018.

⁶ Applicants' affidavit filed 25 March 2019 at Annexure 'D'.

- [4] The applicants later received a text message from the respondent confirming that a full invoice for the scope of works would be provided once that work has been completed to the applicants' satisfaction.⁷
- [5] The respondent later sent a text message to the applicants where he explained that he wanted to get the job started. He required a deposit because he was not able to finance the work himself. Over the next two to three weeks, there were numerous occasions when the parties communicated with each other. The applicants enquired about the progress of the work and asked for photographs of the work undertaken. The respondent in turn requested more funds from the applicants.
- [6] On or about 15 July 2018, the respondent offered to rent the applicants' house from them at \$275 per week. They suggested that he should discuss this with their property manager, however it seems that this issue did not progress any further after that.
- [7] The following day,⁸ the respondent emailed the applicants to inform them that he had completed 90% of the painting of the premises. He added that the wall in the bathroom had broken and it would need to be replaced.⁹ He also sent a text message saying that he had emailed some photographs of the progress of the work at the house and he requested a further \$1,000 to be placed into his account. That amount was later deposited into the respondent's bank account.
- [8] The applicants had an arrangement with Bunnings for the supply of the materials relating to the scope of works. They ordered and paid for the materials and the respondent collected the materials. On 17 July 2018,¹⁰ the applicants contacted the respondent and told him that they had organised and paid for the materials from Bunnings. There was a discussion between the parties about when the work to the bathroom would be completed with the applicants being told that it would be completed by Friday, which was in three days' time. The respondent later told them that the completion date had to be further put back until the following Sunday. Around the time that this conversation took place, Bunnings contacted the applicants to advise that the respondent had added other building materials to their order, including cladding.¹¹ Bunnings also advised that he had not collected the materials, meaning that the work could not be undertaken.
- [9] On the following Monday,¹² the applicants telephoned the respondent to enquire when the bathroom would be finished. He said that it would not occur until the following Wednesday,¹³ but he required the applicants to deposit a further \$1,000 into his account as 'everything was almost done'.
- [10] Overall, the applicants deposited into the respondent's bank account a total amount of \$4,500 as payment for the work that he was to undertake on their house. The details of those deposits were:

⁷ Applicants' affidavit filed 25 March 2019 at Annexure 'E'

⁸ 16 July 2018.

⁹ Applicants' affidavit filed 25 March 2019 at Annexure 'F'.

¹⁰ This was a Tuesday.

¹¹ Applicants' affidavit filed 25 March 2019 at Annexure 'H'.

¹² 23 July 2018.

¹³ 25 July 2018.

05 July 2018	\$1,500.00 described as 'Townsville painting inv6';
11 July 2018	\$1,000.00 described as 'Townsville painter';
16 July 2018	\$1,000.00 described as 'Townsville painter'; and
23 July 2018	\$1,000.00 described as 'Oonoonba Property'. ¹⁴

- [11] In addition to those payments made to the respondent, there were the other costs associated, such as the purchase of the materials from Bunnings, which were paid for by the applicants.
- [12] Around that same time, the applicants' property manager discovered that someone had been 'squatting' in the applicants' house, and the squatter was suspected of using illicit drugs inside the house. This information was passed onto the applicants and it was inferred that the respondent was that person responsible.
- [13] The applicants' property manager went to the house and took some photographs, which were then emailed to the applicants. Those photographs showed a mattress on the floor of one of the rooms with some bedding. There was a television on a small table in the corner of that room, along with some personal items such as clothing and some luggage bags in the same room.¹⁵
- [14] That respondent told the property manager that the mattress, TV and clothing belonged to his girlfriend who was helping him with the scope of works. She used the mattress to lie down when she got tired. It was during this conversation that the respondent told the property manager that all the work to the applicants' house would be completed by the next day, being Friday 27 July 2018.
- [15] On Saturday, 28 July 2018, the applicants travelled from Sydney to Townsville to inspect the work undertaken by the respondent. When they arrived at the house, several observations were made, such as –
1. The painting was incomplete and/or poorly executed. The toilet, bathroom, kitchen cupboards and other areas of the house had either not been painted or had been left in a condition where the painting was incomplete.
 2. There had been no further progress to the works in the bathroom. The tiles had not been laid, the shower screen, vanity and shower tap had not been installed.
 3. The kitchen bench top had not been installed.
 4. The toilet had been used and was filthy.
 5. A hose had been attached to the laundry tap. The laundry floor was wet giving an impression that the respondent or someone else had used this area.
 6. Cigarette butts were found inside and outside the house, including on the windowsills and on the new kitchen bench top.
 7. There were empty alcohol bottles and cans found inside and outside the house.
 8. Other household items were found inside the house including a tube of toothpaste, instant coffee, gravy and a cooking pot.
 9. A bicycle was found at the back of the house.
 10. There was a cat food bowl along with some cat food found hidden inside the laundry cabinet.
 11. A 'dog and cat' vacuum cleaner was plugged in.
 12. A cat was found inside the house.
 13. The carpets and the linoleum had been stained with cat urine and the entire inside of the house had a distinctive owner of cat urine and faeces.
 14. Walls were damaged and/or dirty.

¹⁴ Applicant's affidavit filed 25 March 2019 at paragraph 46 and Annexure 'S'.

¹⁵ Applicant's affidavit filed 25 March 2019 at Annexures 'J' and 'K'.

15. The oven and the stove had been used and were dirty.
 16. Window shutters were broken.
 17. Fly screens had been removed.
 18. Skirting boards had been removed along with external trim.
 19. The external wall panel on the bathroom had been removed and not replaced.
 20. Rubbish was found strewn inside the house, as well as in the front and rear yards.
 21. The water pipe underneath the bathroom was found leaking and held together with a clamp.
 22. The fire alarm and light fittings had been removed.
 23. The light fitting located in the kitchen had been broken.
 24. Air-conditioners were found plugged in and turned on.¹⁶
- [16] Found on the floor of one of the bedrooms was a small clip seal plastic bag which contained what appeared to be a quantity of white crystallised substance. The bag and substance were photographed.¹⁷ The photographic image provided within the applicants' material depicts an item that is generally associated with people who are involved in illicit substances.
- [17] I will take this opportunity to indicate that I draw no inferences from what that item may or may not have been, and nor does its discovery within the applicants' house impact upon the decision that I have reached in this matter.
- [18] The applicants telephoned the respondent. It was arranged that he would meet them at the house later that day. He said that he was going to do some work on the house that night and finish all the work by the following day. The applicants remained at the house until 7:30pm, however he did not meet them as arranged.
- [19] At about 6:30am the following morning the applicants returned to the house to find the respondent's motor vehicle parked in the backyard. Wet clothes were found hanging out to dry on the clothesline and the air-conditioners throughout the house were all turned on.¹⁸ Clearly the respondent had returned to the residence after the applicants left the previous night.
- [20] When the applicants entered the residence, they found the respondent asleep on a mattress in one of the bedrooms. His girlfriend was also present. He became aggressive and angry towards the applicants and claimed that he been working on the house 24/7. He was at that time particularly hostile, aggressive and belligerent towards the applicants. Because of the way the respondent conducted himself, the applicants sought the assistance of the police to have him removed from the premises and the arrangement between the parties was severed.
- [21] The applicants now seek damages for the costs they incurred, amongst other things, in rectifying the scope of works. On the other hand, the respondent also seeks damages. Both the applicants' claim, and the respondent's counter claim are discussed later in these reasons.

Respondent was an unlicensed contractor

¹⁶ Applicant's affidavit filed 25 March 2019 at Annexure 'L'.

¹⁷ Applicants' affidavit filed 25 March 2019 at Annexure 'M'.

¹⁸ Applicants' affidavit filed 25 March 2019 at Annexure 'O'.

- [22] The tribunal, when conducting a proceeding, can inform itself in any way that it considers appropriate.¹⁹ It was apparent during the hearing that neither party had produced any evidence to show a history of any license issued to the respondent by the Queensland Building and Construction Commission ('the QBCC').²⁰
- [23] At some point during the hearing, the respondent was asked about his qualifications. He said that he had no formal qualifications as a painter, although he had operated in that capacity for over 20 years. He went on to say that he was not qualified as a carpenter, tiler or plumber and nor was he the holder of any suitable accreditation or license issued by the QBCC in the areas of building, carpentry, tiling, plumbing or painting. Later in these reasons I will return to discuss the issues surrounding the *Queensland Building and Construction Commission Act 1991* (Qld) ('the QBCC Act') and unlicensed contractors.
- [24] Apart from the respondent being unlicensed, he inserted into his invoices his cancelled ABN. On two of the three invoices he provided to the applicants he quoted the amounts \$3,100 and \$1,500. He also indicated that both of those amounts were GST inclusive. The applicants' evidence, which I accept, shows that the ABN provided by the respondent is recorded against his name, however it was cancelled from 30 June 2012. He is not currently registered for GST.

Applicants' claim for damages

- [25] For the formation of a contract, there are three basic requirements for a valid contract: agreement, intention to contract and consideration. On the information provided to the tribunal, it appears that the parties entered into an oral contract for which the respondent, as a building contractor,²¹ was to undertake domestic building work²² on the house owned by the applicants. In exchange for that work undertaken, the applicants were to pay the respondent an amount of money ranging from \$6,600 to \$7,600.
- [26] The applicants arranged for other contractors to undertake remedial work on the house to rectify and complete the work that the respondent was engaged to do. The work was completed by those other contractors to a satisfactory standard. The applicants seek the amount of \$4,229.64 for this part of their claim and it includes additional materials purchased from Bunnings. The breakdown of those expenses are:²³

TABLE 1

Mick Langrope Painting	\$ 1,100.00
DNG Plumbing, Gasfitting and Roofing	\$ 595.00
Isokangas Renovations	\$ 2,180.64
Materials purchased from Bunnings to finish work	\$ 354.00

¹⁹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 28.

²⁰ The building regulator.

²¹ A 'building contractor' means and includes a person who intends, carries out or has carried out domestic building work. *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 1B, Part 1, s 1.

²² Domestic building work' includes the renovation, alteration, extension, improvement or repair to a home. *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 1B, Part 1, s 4.

²³ Applicants' affidavit filed 25 March 2019 at Annexure 'T' which includes individual invoices from those contractors and for the items purchased from Bunnings.

TOTAL \$ 4,229.64

- [27] After giving due consideration to the evidence, I am satisfied that the respondent should pay to the applicants the costs that they incurred in rectifying the work undertaken by the respondent, or the work that he did not carry out. Therefore, I intend to order that the amount of \$4,229.64 claimed under Table 1, which will be included in the overall damages to be awarded against him.
- [28] After the respondent vacated the premises, a locksmith was arranged so that all the locks to the house could be changed. This was necessary because of the respondent's behaviour of 'squatting' in the premises, and he had a set of keys for the house which he never returned. The applicants seek to recover further costs that they incurred engaging that locksmith to replace all the locks at the house. Added to this is the costs of cleaning the house of the urine and faeces left behind by the respondent's cat. The breakdown of those expenses are:²⁴

TABLE 2

Locksmith – to replace all locks	\$ 450.00
Deadbolt, latch and chain purchased from Bunnings	\$ 236.52
Removal of existing soiled floor coverings	\$ \$4,400.00
Cleaning costs	\$ 180.00
TOTAL	\$ 5,266.52

- [29] In respect of Table 2, I am satisfied that evidence supports the applicants so far as the costs incurred by them for the replacement of all locks and the purchase of other locking mechanisms for the premises. In respect to the respondent being responsible for a cat living at the premises, I accept that there would have been cleaning costs involved in removing the urine and faeces stains. I am also satisfied that \$180 is a reasonable amount for those costs.
- [30] However, I am not satisfied that there is any justification to award damages of \$4,400 for the removal of the soiled floor coverings. The head of damages suggests that an amount was expended on the removal of existing soiled floor coverings. Noted in the tax invoice and quote received from a contractor engaged to undertake that work was the sanding of the floors. It seems that the contractor was engaged, only to remove the soiled floor coverings and was not engaged to replace them, but was engaged to sand the wooden floors in the house, including the front verandah.²⁵ The applicants suggest that the carpets and the linoleum had been stained with cat urine and the entire inside of the house had a distinctive odour of cat urine and faeces and that is why the floor coverings had to be removed. However, that does not explain why there was a need to sand the floors, including the verandah. I am of the view that to award damages to the applicants for having their floors sanded would unjustly enrich them and that part of their claim is rejected. Notwithstanding my comments about the floor coverings, I am satisfied that damages of \$866.52 should be awarded arising out of the heads of damages provided for in Table 2.

²⁴ Applicants' affidavit filed 25 March 2019 at Annexure 'U' which includes individual invoices from those contractors engaged to undertake this work.

²⁵ Applicants' affidavit filed 25 March 2019 at Annexure 'U'.

- [31] The applicants seek to recover the loss of rent that they would have otherwise received had the respondent fulfilled his obligation and completed the work. The loss of rent was for the following periods:

TABLE 3

Between 05/07/2018 to 29/07/2018. 25 days at \$41.43 per day.	\$	1,035.75
Between 30/07/2018 to 07/09/2018. 40 days at \$41.43 per day.	\$	1,657.20
TOTAL	\$	2,692.95

- [32] There has been no evidence placed before the tribunal to support the proposition that the applicants had suffered a loss of rental income during the times specified. Nor has any evidence been provided to show that during those times a rental lease was in effect for the occupancy of the house by a tenant. The heads of damages specified in Table 3 calls for mere speculation and for those reasons just given, I reject this part of the applicants' claim.

- [33] The applicants also seek to recover their costs for the unnecessary travel expenses that they incurred travelling between Sydney and Townsville. Those expenses are:²⁶

TABLE 4

Flights	\$	732.82
Accommodation	\$	419.00
Rental car and travel expenses	\$	256.90
Meal expenses	\$	224.64
TOTAL	\$	1,633.36

- [34] Regarding Table 4, the applicants went on to say that during the time that they were in Townsville they were unable to stay at their property due to the condition of the house, as well as concerns that the respondent would return to the property. I note that the applicants were assisted during this process by their property agent who is locally based in Townsville.

- [35] His assistance included visiting the house, taking photographs and engaging with the respondent when the respondent was undertaking the scope of works. It is not clear from the applicants' material why it was necessary for them to travel to Townsville given that they had engaged a property agent. Having regard to those issues just identified, I reject the applicants' claim regarding travel and accommodation expenses.

- [36] In addition to the claims made as described in the above Tables, the applicants also seek the amount of \$6,077 made up of:

TABLE 5

Monies already paid to the respondent	\$	4,500.00
Cost of materials purchased from Bunnings	\$	1,577.00
TOTAL	\$	6,077.00

²⁶ Applicants' affidavit filed 25 March 2019 at Annexure 'V' which includes individual receipts from the various service providers for travel, vehicle, accommodation, food and beverage expenses incurred.

- [37] Firstly, I am not satisfied that the respondent should pay the applicants for the materials purchased from Bunnings. There is no evidence before the tribunal to suggest that the materials were not used by the respondent on the scope of works undertaken on the applicants' house.
- [38] However, the respondent should pay to the applicants the monies that they paid him to carry out the work. The deposit of the various amount of money by the applicants into the respondent's bank account was undertaken in good faith on the promise by him that he would complete the scope of works. It is clear by his constant delays in completing the work, and his overall failure to complete the work made it necessary for the applicants to engage other contractors to rectify or complete the scope of works.
- [39] Given the significant distance between where the applicants lived and Townsville, I am satisfied that they were vulnerable homeowners. The respondent owed the applicants a duty of care to complete the scope of works as he had promised, in fair exchange for consideration. The work undertaken by the respondent was defective, incomplete and below the reasonably acceptable standard that the applicants expected from him.
- [40] Overall, the claim by the applicants against the respondent totalled \$19,899.47. Having regard to my rejection of some of the heads of claim, I am satisfied that the respondent should pay damages to the applicants in the amount of \$9,596.16.

Respondent's response and counter claim

- [41] In his response and counterclaim, the respondent says that the applicants should pay him an amount \$6,500 made up from the following items listed in Table 6:

TABLE 6

Estimate amount originally agreed upon for the bathtub	\$	3,500 – 4,500
Travel to and from Bunnings and time looking for products	\$	400
Extra work due to hidden damage and alterations	\$	2,500
	SUB-TOTAL	\$ 6,400 – 7,400
LESS total paid by applicants to respondent	\$	900
	TOTAL	\$ 5,500 – 6,500

- [42] In addition, he seeks a further \$1,700 comprising of the following items due to what he claims were extras jobs completed that were not included in the original estimate:

TABLE 7

Rotten timber work on outside of house	\$	300
Remove bedroom cupboards and painting	\$	550
Removal of curtain rods and brackets	\$	200
Patch holes due to removal of curtain rods	\$	150
Prepare and paint splash backs	\$	500
	TOTAL	\$ 1,700

- [43] He also alleges that the applicants should pay him a further amount of \$10,000 made up from the following claims:

TABLE 8

Mental abuse	\$	5,000
Physical abuse	\$	5,000
	TOTAL	\$ 10,000

- [44] Overall, the counter claim by the respondent against the applicants totals an amount between \$17,200 and \$18,200 ('the counter claim amount'). The counter claim amount includes three distinct ambits of his claim.
- [45] In the first part of his counter claim, the respondent argues that the applicants are liable to pay him an amount of between \$6,400 to \$7,400, less the amount of \$900 which he says was an amount paid to him by the applicants. This leaves an amount of between \$5,500 and \$6,500. He argued that this is an amount originally agreed upon for an estimate for a bathtub. It is unclear from his claim as to exactly what he is referring to and there was no other supporting evidence or material to support this claim.
- [46] The counter claim amount also includes a claim of \$400 for travelling expenses, including the time that he incurred travelling to and from Bunnings to collect the material for the scope of works. This included time spent looking for the products required. There is nothing within the respondent's material or his evidence that explains, describes or validates this part of the counterclaim amount, or even explains how many trips he made or the dates of those trips. I note that the shortest possible return route between the applicants' house and Bunnings is five kilometres, or an estimated 12 minutes of travelling time.²⁷ I also note that the applicants had an arranged account with Bunnings, and all that was required of the respondent was for him to collect the materials.
- [47] The respondent also includes an amount of \$2,500 described as being for extra work due to hidden damage and alterations. Again, it is unclear as to what this involves or relates to because he has failed to provide any evidence or other material to support this portion of his claim.
- [48] In the second part of his counter claim, the respondent goes on to say that the applicants should pay him a further \$1,700 for other work completed that was not included in the original estimate he gave for the painting the applicants' house. He described the work as rotten timber work on the outside,²⁸ the removal of bedroom cupboards and painting,²⁹ removal of the curtain rods and brackets, the patching of holes due to removal of the curtain rods and the preparation and painting of splash backs. Once more there has been no material whatsoever placed before the tribunal to validate this claim.
- [49] The most remarkable part of the counter claim is the respondent seeking the amount of \$10,000 for mental and physical abuse. Seemingly, he suffered those injuries because he had to deal with the constant queries by the applicants about the work that he was undertaking on their house, and he was required to work extremely long hours to undertake the work. Again, he failed to provide any evidence, such as a medical report, to the tribunal to validate this part of his counter claim.

²⁷ Time and distance calculated by Google maps.

²⁸ \$500 claimed for this work.

²⁹ \$550 claimed for this work.

- [50] Overall, for the tribunal to entertain the respondent's counterclaim, there is a requirement to examine whether there is any legal basis for that counterclaim. Discussed earlier in these reasons was an admission from the respondent that he was an unlicensed contractor.
- [51] In regard to work undertaken by an unlicensed contractor, there is a requirement under the provisions of the QBCC Act that unless a person is exempt, they must not carry out, or undertake to carry out, 'building work' unless they hold a contractor's licence of the appropriate class under the QBCC Act.³⁰ The QBCC Act defines the term 'building work',³¹ and I am satisfied that the work undertaken by the respondent falls within the ambit of that definition. I am also satisfied that the building work undertaken by the respondent on the home³² owned by the applicants was 'unlicensed work'.
- [52] Notwithstanding that he was an unlicensed contractor undertaking that building work, the respondent persisted with his counter claim seeking remuneration from the applicants for the work, along with a claim for mental and physical abuse.

The QBCC Act and unlicensed contractors

- [53] The QBCC Act is legislation that regulates the building industry. The objects of the QBCC Act are to ensure the maintenance of proper standards in the industry and to achieve a reasonable balance between the interests of building contractors and consumers. There are remedies provided within the QBCC Act for defective building work, along with the provision of support, education and advice to consumers and those that undertake building work.
- [54] The objects of the QBCC Act further provide for the regulation of domestic building contracts to achieve a reasonable balance between the interests of building contractors and homeowners.³³ People, such as the respondent, who are involved in the installation of building products are held responsible for the safety of those products.
- [55] The functions of the QBCC include administering the QBCC Act.³⁴ The QBCC Act provides for the issuing of a licence (a 'contractor's licence') which is at the discretion of the QBCC.³⁵ A contractor's license may be issued by the QBCC authorising the licensee to carry out all classes of building work; or to carry out building work of one or more classes specified in the licence.³⁶ Essentially the contractors' licences are divided into classes by regulation 'according to whether the

³⁰ *The Queensland Building and Construction Commission Act 1991* (Qld), s 42.

³¹ *The Queensland Building and Construction Commission Act 1991* (Qld), Schedule 2.

³² *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 1B, s 9 provides that a home is a building or portion of a building that is designed, constructed or adapted for use as a residence.

³³ *Queensland Building and Construction Commission Act 1991* (Qld), s 67AZN – provides that domestic building contracts are regulated under Schedule 1B and the provisions of Schedule 1B apply to domestic building contracts and the parties to those contracts.

³⁴ *The Queensland Building and Construction Commission Act 1991* (Qld), s 7 provides that the functions of the QBCC include administering the *Queensland Building and Construction Commission Act 1991* (Qld).

³⁵ *Queensland Building and Construction Commission Act 1991* (Qld), s 30.

³⁶ *Queensland Building and Construction Commission Act 1991* (Qld), s 30(1).

licence relates to all classes of building work'. Where a contractor's license is not a general one, it is limited to a specified class or specified classes of building work.³⁷

- [56] Notwithstanding those provisions of the QBCC Act just mentioned, section 42(1) of the QBCC Act provides that subject to certain exemptions,³⁸ a person must not carry out, or undertake to carry out, building work unless they hold a contractor's licence of the appropriate class. Furthermore, section 42(3) of the QBCC Act goes on to say that subject to certain conditions,³⁹ an unlicensed person who carries out building work is not entitled to any monetary or other consideration for doing so.
- [57] Previously, the Queensland Court of Appeal had discussed the operation of the legislation with respect to persons undertaking unlicensed building work and seeking a monetary payment for that work. In *Marshall v Marshall* the court observed that the effect of s 42(3) is to prevent an unlicensed builder, in proceedings of any kind, from recovering the price or any part of it payable under a contract for building work carried out in contravention of the section. The court went on to say that the terms of s 42(3) are very wide and a person who carries out work in contravention of s 42 is not entitled to any monetary consideration.⁴⁰
- [58] In *Cook's Construction P/L v SFS 007.298.633 P/L (formerly trading as Stork Food Systems Australasia P/L)* the court found that s 42(1) renders illegal the making and performance of a contract for building work by an unlicensed builder and s 42(3) sterilises any claim which might otherwise be made under a contract or under the common law by an unregistered builder.⁴¹ The court further commented that ordinarily, the law expects that 'he who asserts must prove' and there can be no doubt that where the builder is making a claim to recover payment of reasonable remuneration which has not been paid by the other party, the builder bears the onus of proving the amount to which it is entitled in conformity with s 42(4).⁴²

Conclusion

- [59] I have already indicated within these reasons that I am satisfied that the respondent should pay damages to the applicants in the amount of \$9,596.16.
- [60] Defined within the QBCC Act is the term 'building work',⁴³ and I am satisfied that the work undertaken by the respondent falls within the ambit of that definition.
- [61] I am also satisfied that the building work undertaken by the respondent on the house owned by the applicants was undertaken whilst the respondent was not the holder of a contractor's license, and that significant remedial work had to be undertaken by other contractors to rectify and complete the work undertaken by the respondent.
- [62] Notwithstanding the respondent being an unlicensed contractor, there has not been a scintilla of evidence provided by him to support his counterclaim, in particular those issues canvassed within section 42(4) of the QBCC Act. Therefore, his counterclaim is refused in its entirety and I make the following orders.

³⁷ *Queensland Building and Construction Commission Act 1991* (Qld), s 30(2).

³⁸ *Queensland Building and Construction Commission Act 1991* (Qld), Schedule 1A.

³⁹ As provided for in *Queensland Building and Construction Commission Act 1991* (Qld), s 42(4).

⁴⁰ [1999] 1 Qd R 173 at 176 per McPherson JA.

⁴¹ [2009] QCA 75 at [37] – [39] per Keane JA.

⁴² [2009] QCA 75 at [43] – [44] per Keane JA.

⁴³ *The Queensland Building and Construction Commission Act 1991* (Qld), Schedule 2.

1. That the respondent must pay to the applicants the amount of \$9,596.16 by 4:00pm on 27 March 2020.
2. That the respondent's counter claim is dismissed.