

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Energy Efficient Premium Houses Pty Ltd v Hancock & Anor* [2022] QCAT 203

PARTIES: **ENERGY EFFICIENT PREMIUM HOUSES PTY LTD**  
(applicant)

**V**

**THOMAS HANCOCK AND ANNE HANCOCK**  
(respondents)

APPLICATION NO/S: BDL201-20

MATTER TYPE: Building matters

DELIVERED ON: 7 June 2022

HEARING DATE: 31 May 2022

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS: **1. The application and counterclaim are dismissed.**  
**2. No order as to costs.**

CATCHWORDS: CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – PERFORMANCE OF WORK – REMEDIES FOR BREACH OF CONTRACT – where claims for variations – whether sufficient evidence to support amount claimed

APPEARANCES &  
REPRESENTATION:

Applicant: Self-represented

Respondents: Self-represented

## REASONS FOR DECISION

- [1] On 4 May 2017, Mr and Mrs Hancock entered into a contract with Energy Efficient Premium Houses Pty Ltd ('EEPH') for the construction of a new garage and driveway, new entry way, enclosure of a patio, enclosure of the existing garage and the provision of a new patio.
- [2] The contract price was \$179,500. It is not in dispute that this amount was paid by Mr and Mrs Hancock.
- [3] The dispute before me relates to a number of variations to the contract.
- [4] Mrs Hancock has filed a statement with numbered attachments.

- [5] EEPH has filed many hundreds, if not thousands, of pages of material, which is unpaginated and poorly organised. On 11 February 2022, it filed submissions in which it stated:

Mr Member Brown, there is so much paperwork to digest, all instigated by the Hancock's, if I may suggest, if you could have one of your clerks read through all the pleadings back and forth ... They will be able to brief you and save you a lot of valuable time because in these documents therein lies THE TRUTH.

- [6] At the hearing, I asked the director of EEPH to summarise the claim for me. Mr Eaton did so in the following terms:

**Variations**

Electrical - \$4,675

Plumbing - \$1,500

Extra windows - \$1,154

Shower - \$534

Tiling - \$2,767

Toilet and vanity - \$1,748

Concreting - \$8,046

Truck and bobcat - \$5,250

**Credits**

Amounts paid by Mr and Mrs Hancock - \$12,000

Tiling - \$925

Vanity and mirror - \$1,397

Carpet - \$2,000

- [7] EEPH also issued an invoice on 16 June 2019 for administration costs in the amount of \$2,376.

- [8] Mr Eaton told me that EEPH claim is for \$12,173, plus interest and costs.

- [9] Mr and Mrs Hancock dispute four of the variations – that is those relating to tiling, toilet and vanity, concreting, and truck and bobcat. I will deal with each of those disputed variations in turn.

- [10] However, before doing so, I will refer to the provision in the contract signed between the parties relating to variations. Clause 20 of the contract relevantly provides:

20.1 A variation document must be in writing, in readily legible English, and in all cases, state:

- (a) the work required to carry out the variation;
- (b) the date of the request of the variation;
- (c) the price of the variation;

(d) for an increase in contract price, when that price becomes payable, or for a decrease in the contract price, when the decrease is to be accounted for;

(e) the change to the contract price because of the variation; and

(f) if there will be a delay because of the variation, a reasonable estimate of that delay.

...

20.3 The owner must agree to the variation in writing prior to the builder commencing the variation works.

...

20.6 If the price of a variation is not agreed, the price is:

(a) for additional work, the reasonable price for that work including an amount of the builder's margin; and

(b) for omitted work, the reasonable price of that work.

### *Tiling*

- [11] On 16 November 2017, EEPH and Mr and Mrs Hancock signed a variation to the contract. Item 1 was for:

Lay non standard owner supplied tiles note (no warranty) & extra to lay

- [12] The variation document contained the following provision in relation to cost:

The price of all variations without a cost are to include 20% profit margin plus GST or the terms will be on accost plus 20% basis plus GST unless stated above.

- [13] As noted above, the amount claimed for tiling by EEPH was \$2,767.

- [14] EEPH provided calculations for tiling at tab 14 of his material provided on 28 October 2021, as follows:

Say 20 sqm at 30 sqm. Credit tiles - \$600CR

Lay standard ceramic tiles 20 sqm at \$40/sqm - \$800CR

Provide grate to shower floor - \$235DB

Fit grate approx. 3 hours (note: 2 lm of grate purchased 70 mm deep) - \$180 DB

Paid owners tiler \$2,300 cash - \$2,300

BALANCE - \$1,315

+ 20% builders margin - \$263

+ 10% GST - \$157.80

TOTAL AMOUNT OWING FOR TILING - \$1,735.80.

- [15] The amount of \$1,735.80 bears no relationship to the amount of \$2,767 claimed.

- [16] Mrs Hancock provided me with a quote for tiling which was provided by SedTile to EEPH, which appears at attachment 33 of her statement filed on 16 November 2021.

The quote included \$300 for bedding per bathroom, and \$50 sqm for tiling. She calculated that there was 8.2 sqm of tiling required, resulting in a total of \$710.

- [17] Mrs Hancock also claimed the credit for \$600 for supplying tiles set out in the EEPH calculations. She also claimed a further credit of \$324.35, being the value of the grate included in the building contract.
- [18] Ultimately, it is for EEPH to establish its claim for moneys owed under the variation. The variation itself is vague, and does not set out details (including area) of the non-standard tiles to be laid. EEPH has provided calculations which lead to a different amount to that claimed. Mrs Hancock has provided calculations which show a credit to her of \$29.15.
- [19] Further, I note that the amount of \$2,300 paid in cash by EEPH to the tiler equates to \$115 sqm over 20 sqm. No explanation is given as to why this is more than double the \$50 sqm quote from SedTile.
- [20] In all of the circumstances, the evidence is such that I am unable to be satisfied that there is any amount owed to EEPH by Mr and Mrs Hancock.

*Toilet and vanity*

- [21] On 25 October 2017, EEPH and Mr and Mrs Hancock signed a variation to the contract. Items 1 and 4 were for:

Fit owner's toilets and vanities

...

Fit & build vanity bench

- [22] Again, the variation document contained the following provision in relation to cost:

The price of all variations without a cost are to include 20% profit margin plus GST or the terms will be on accost plus 20% basis plus GST unless stated above.

- [23] As noted above, the amount claimed for tiling by EEPH was \$1,748.
- [24] EEPH provided calculations for the toilet and vanity at tab 15 of his material provided on 28 October 2021, as follows:

Remove existing piping – rough in for standard toilet. Build wall to cover back toilet pedestal. Retrofit water and sewer outlet, knock hole in brick wall.  
14 hours x \$81 - \$1,134DB

Cut down vanity top. Build wall frame. Fit vanity tops and plumbing waste. Retrofit wall and waste plumbing. Finish vanity build. 8 hours at \$81 - \$648DB

Credit vanity unit (1800 as per spec) - \$1,200CR

Credit toilet - \$296.72CR

Credit mirror – \$100CR

BALANCE - \$185

+ 20% builders margin - \$37

+ 10% GST - \$22

## TOTAL AMOUNT OWING - \$244

- [25] The amount of \$244 bears no relationship to the amount of \$1,748 claimed.
- [26] Mrs Hancock has claimed that the credit for the vanity should be \$2,144.90, and has referred to a quote which was provided by Builders Discount Warehouse to EEPH, which appears at attachment 36 of her statement filed on 16 November 2021. This quote includes a vanity with tops, taps, basins and wastes.
- [27] Ultimately, it is for EEPH to establish its claim for moneys owed under the variation. EEPH has provided calculations which lead to a different amount to that claimed. Mrs Hancock's claimed credit for the vanity would lead to an overall credit to her of \$758.72.
- [28] In all of the circumstances, the evidence is such that I am unable to be satisfied that there is any amount owed to EEPH by Mr and Mrs Hancock.

*Concreting*

- [29] On 16 November 2017, EEPH and Mr and Mrs Hancock signed a variation to the contract. Item 5 was for:

Provide approx. 90 m2 concrete d/way etc.

- [30] Again, the variation document contained the following provision in relation to cost:

The price of all variations without a cost are to include 20% profit margin plus GST or the terms will be on accost plus 20% basis plus GST unless stated above.

- [31] As noted above, the amount claimed for tiling by EEPH was \$8,046.
- [32] EEPH provided handwritten calculations for concreting at tab 16 of his material provided on 28 October 2021. The calculations amount to \$8,046 as claimed. I note in passing that there appears to have been a builders margin charged twice on materials – once as a line item, and again to the total.
- [33] However, the only evidence EEPH provided in support of the costs actually expended was an invoice from New Life Concrete Pty Ltd to pour and finish 120 m2 driveway in the amount of \$2,783 (which already includes GST).
- [34] The variation refers to 90 m2 of concrete driveway. As a 75% proportion of the invoice from New Life Concrete Pty Ltd, this would be \$2,087.25. Once the 20% builders margin is added, the total is \$2,504.70.
- [35] As EEPH has not provided any other evidence in support of its calculations, I am not prepared to allow more than \$2,504.70 for this variation. It is a matter for EEPH to provide evidence of its costs actually incurred, and it has not done so beyond the invoice from New Life Concrete Pty Ltd.

*Truck and bobcat*

- [36] Mr Eton conceded that no variation had been entered into in relation to use of the truck and bobcat.
- [37] EEPH provided an explanation for use of the truck and bobcat at tab 16 of his material provided on 28 October 2021, as follows:

To lay concrete you must prep the site first i.e. clear all the grass, shrubs, bushes, old concrete and rubbish. The Hancocks had some unknown in for a day to move dirt and rubbish to beside pool for \$220 plus a carton of beer. I don't and can't employ unknowns like this or I would end up in big trouble with Workplace Health & Safety. In my previous pleadings (sic) I have shown workings and dump fee charges, truck and bobcat charges, shown at commercial rates over \$10,000. Excavating the front and side would well exceed my claimed \$5,250.

- [38] The previous calculations which EEPH refer to are a series of calculations made by reference to standard rate for hire of earth moving equipment, and per load dumping fees. There is no evidence as to what costs (if any) were actually incurred by EEPH. Further, the work claimed by EEPH as described above appears to relate to concreting, which was the subject of the previous variation.
- [39] In circumstances where there is no signed variation, and where the amount claimed by EEPH was calculated without reference to the actual costs incurred, I am unable to be satisfied that there is any amount owed to EEPH by Mr and Mrs Hancock.

### **Counterclaim**

- [40] Mr and Mrs Hancock have filed a counterclaim for damages caused by EEPH during the renovation.
- [41] However, in Mrs Hancock's submissions at the hearing, she described the \$12,000 paid to EEPH as having been paid as a 'commercial resolution' to the dispute. I can only assume that in arriving at this amount, Mr and Mrs Hancock took into account any damages caused by EEPH during the renovation. It seems to me that they cannot now ask for that amount to be reconsidered.

### **Disposition**

- [42] I have not allowed amounts claimed by EEPH under variations for tiling, toilet and vanity, and truck and bobcat. I have allowed only \$2,783 for the concreting variation.
- [43] Consequently, I have disallowed \$15,028 in claims made by EEPH. This is more than the amount sought by EEPH in the proceedings. It follows that the application is to be dismissed.
- [44] The counterclaim is also to be dismissed.
- [45] The parties have each sought their costs. Given that neither party has been successful, there will be no order as to costs.