

building today

THE OFFICIAL MAGAZINE OF THE REGISTERED MASTER BUILDERS FEDERATION

Weathertight remediation: Legal risk management for builders



Inside:

STCF: Protect the subcontractors

Liability solutions for the industry

Using accredited building surveyors

Tim Bates: Breach of contract?

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inside this issue

RMBF News 4-9

Liability solutions for the industry; Growing your company

Industry News 10-18

Protection for Mainzeal subcontractors; Using accredited building surveyors

Weathertightness 20-21

Legal risk management for builders undertaking weathertightness remediation

Back in Time 24

Find out what made the headlines way back when . . .

Products 25

Innovative timber products

Columnists 27-30

The cheaper the better; The Cairns Gardens visitor centre; Breach of contract?

Building Consents 31

Monthly building consents by region

Win a free business management consultation with *Building Today* and Trades Coaching New Zealand. See page 22.

building today

In this issue, RMBF chief executive Warwick Quinn discusses the merits of proportional liability as the way to go to provide a fairer outcome for those parties contributing to remedial costs in the construction sector.

He urges the Law Commission to side with the Federation on the issue in its review of "joint and several" liability.

This month's cover story is a continuation of the series of articles on weathertight remediation, and outlines the significant issue of legal risk management for builders undertaking such work. Go to page 20 to read more.

And *Building Today* has teamed up with Trades Coaching New Zealand in offering a free business management consultation to a different company each month. See page 22 for more details.

Andrew Darlington
Editor



cover story 20-21

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chief's chat

by ceo warwick quinn

Liability – what's the best solution for our sector?

As part of the ongoing review of the building "system", the Government has asked the Law Commission to review "joint and several" (J&S) liability.

J&S effectively means if one or more of the parties (who have contributed to a particular problem) are unable to meet their share of the remedial costs, their share must be covered by those who can pay.

This has resulted in some parties paying for more than they are actually legally liable for, or being found liable for amounts that they perceive as out of proportion to their actions.

This last man standing, deep pocket outcome is often considered unfair by those who have to pay, and there have been calls for proportional liability to be introduced.

Now, to be clear, some think proportional liability means that if your proportion of the build is, say, 5%, then the total exposure to any liability is 5%. Wrong.

If you caused 100% of the damage then you are liable for the lot, irrespective of what percentage of the build you did — and there is no call on any other party by the affected property owner as no one else is culpable.

Now that sounds fair enough doesn't it? Well, yes, unless you are the home owner. If the negligent party



no longer exists, the home owner is left high and dry with nowhere to turn. With J&S this issue does not arise, at least not to the same degree.

The RMBF has submitted on J&S to the Law Commission. We are of the view that a building professional:

- should be responsible for their own work, and
- should not be held responsible for work that he or she did not do or had any input into or control over.

And the RMBF supports home owners being protected.

So what can be done to balance these competing perspectives — ie, continue to protect the home owners but provide fairness and equity to the contributing parties in the case of a claim?

Fairer outcome

It is clear that introducing proportional liability will provide a fairer outcome for those parties contributing to any repair costs, but exposes home owners if not all parties exist.

So in order to protect home owners, something needs to be introduced to balance the ledger.

One mechanism that works in the residential space is a home warranty. Should a home owner take one out, and the builder is unable or unwilling to fix an issue, the surety company will step in and do so (assuming it meets the conditions of that warranty).

The Master Build Guarantee has been doing this for decades. Indeed, a recent article in the *New Zealand Herald* by a liquidator managing a building company collapse confirmed the Guarantee has real value.

Some argue that as J&S applies to all sectors of New Zealand, it is too difficult to isolate just the construction industry and treat it differently. We do not agree — they managed to do it in Australia.

Furthermore, others say that if you introduce proportional liability it must be accompanied by compulsory home warranties. Again, we do not agree, as compulsion brings with it a whole host of complications. They tried it in Australia and it failed.

The home owner should be free to choose if they want cover or not, and the market should be free to develop the products and services the consumers require.

Just like insurance products (and a home warranty is not insurance), the risk appetite will differ from individual to individual, and insurance is not compulsory.

Consumer protection proposals

So if home warranties are not compulsory how are home owners protected? Well, it just so happens that the consumer protection proposals under Building Act Amendment No. 4 provide the perfect opportunity to solve that problem.

One of the key recommendations in the Bill is the introduction of a disclosure regime whereby certain information will have to be disclosed to home owners before a building contract is entered into (and written building contracts will be compulsory over a certain amount).

This is to ensure consumers (home owners) are well informed before they make a final decision on who they will engage as their builder — ie, they make an informed choice knowing the consequences of their decision.

With this in place, it is a simple matter to disclose to the home owner if a home warranty is available. The home owner can then decide whether they want a warranty or not, knowing the risks of that decision under a proportional liability regime.

We think this system provides the balance that consumers and the construction sector need, and urge the Law Commission to side with us.

Growing your company? Plan carefully!

By RMBF president

David Fabish

After five hard years of severe downturn in the building industry, it is encouraging to hear all the commentary around a recovery in 2013.

There are plenty of positive messages in the media and industry, with people now beginning to talk more confidently.

Naturally, we would all welcome increased workloads and profitability, but the challenge of managing growth is something that the building industry has not risen well to in the past.

Too many building companies have fallen at this critical point in the economic cycle, often due to repeating avoidable common mistakes.

As companies grow, they become exposed to a raft of risks and challenges. Over-enthusiasm in forward prospects can leave previously well-managed systems, discipline and productivity in tatters.

Firms can become so busy procuring and starting new work that they fail to pay attention to the basics, such as monthly accounting, employing appropriately, managing cashflow and dealing with outstanding issues and disputes.

So how do you plan for expected growth? Spending time with your accountant setting up monthly accounting report systems is absolutely critical.



Leaving it until the end of the financial year, or six monthly reporting, both with time lags to prepare accounts, is simply too late.

Construction industry accounting is seriously complicated and fraught with challenges. It is a tough industry in which to get a good snapshot of exactly how a business is performing.

Profits can vary wildly, with milestones hard to gauge and accruals and work in progress difficult to calculate. Positive cash flow can quickly turn to negative.

However, there are now good modern accounting software packages that can provide monthly reporting. By working with your accountant to set annual business plans, budgets and goals, you can at least understand how you are tracking, and read dangerous situations early.

During times of rampant growth, builders can simply

be blinded by progress and mistake cash in the bank for profit. Instead of leaving capital in the business, personal spending increases and, inevitably, the taxman always cometh!

History shows us some common problems rampant growth causes:

- Longer completion times for projects slow down cashflow, but fixed cost overheads continue or even increase.
- The subcontract and supply chain get stretched and rates increase.
- Disputes and issues aren't settled promptly.
- Over-investment in land, staff, equipment and vehicles.
- Loss of productivity and connectivity to staff.

The choice of remaining comfortably where you are or growing to the next level is a decision that should be based on having adequate capital, steady continuous improvement and meticulous planning with a sound appreciation of risk.

In keeping with this article, our annual conference theme this year is Keep Calm and Carry On — aimed specifically at ensuring that our members maintain good business practices while experiencing potential upturns in business.

I suggest you make a point of attending. I look forward to seeing you there in Dunedin in July. Register now at www.masterbuilder.org.nz.

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You'd be silly not to enter Apprentice

Adam Knott entered the Registered Master Builders Carters 2012 Apprentice of the Year with the intention of finding out how he measured up against other apprentices in New Zealand, never expecting he would take out second place in the national competition.

The 25 year-old carpentry apprentice, who is employed by Mackersey Construction, entered the competition after Mackersey construction manager Geoff Hall encouraged him to take part.

He says he is extremely grateful to Geoff for his support, as the Apprentice of the Year experience was "invaluable".

"In my job I have always worked under tough deadlines, so the pressure was never going to be a problem," Adam says.

"What I found really challenging was going into the practical and having no idea what to expect. It's like going into an exam — you try to cram all of your knowledge into your brain, and it isn't until you get the



Adam Knott during the practical component at the national Registered Master Builders Carters 2012 Apprentice of the Year.

piece of paper in front of you that you know what you're up against.

"It was really testing, but it was a great experience. I would encourage any apprentice to enter Apprentice of

the Year — you'd be silly not to. You've got nothing to lose and everything to gain. At the end of the day, you might surprise yourself."

Adam was originally motivated to undertake an

Proud to be a Registered Master Builder

Tony reckons that being able to display the Registered Master Builders brand is a big plus – it's a brand that clients recognise and trust.

There are heaps of opportunities to get the most out of the brand – from displaying it outside offices and on vehicles, to using it in ads and other promotional materials.

As well as a great marketing tool, Tony says that being a member of Master Builders has allowed him to make savings on a wide range of products and services, so it has a direct impact on the bottom line.

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BUILDING EXCELLENCE

of the Year, runner-up says



From left: RMBF president Dave Fabish, Adam Knott and Carters chief executive Paul Bull.

apprenticeship after seeing the opportunities offered by the construction industry. "When I left school I wanted to go out and stand on my own two feet, starting with making a living for myself," he says.

"Getting involved with the construction industry meant I could start making an income and doing something that I enjoy, rather than going to university. The opportunity to start my career straight out of school was a big drawcard."

Adam's work at Mackersey Construction has seen him relocate from the Hawke's Bay to Wellington, which he says has been a huge learning curve.

"By making the move to work on Upper Hutt College's redevelopment in Wellington, I've definitely learnt a whole lot of new skills. I feel so lucky to have been given this opportunity — if something else like this came up I'd do it in a heartbeat."

Adam was stoked with the \$2000 tool allowance he received as a prize for Apprentice of the Year, and is looking forward to his Outward Bound trip with other winners in September.

"One of the prizes I won through Apprentice of the Year was an Outward Bound course, which is an opportunity for all the boys who were in the national competition to get together again. It's a fantastic prize to win."

After attending the House of the Year event, Adam has decided the House of the Year competition is something for him to aspire to.

"I've got the itch to get back involved with residential building, as opposed to heavy commercial. In residential, the work is much more refined, and that high standard is something to aspire to achieve at the end of a job," he says.

"Once the industry calms down and I'm back in the Hawke's Bay, I'd like to look into working with residential building."

The national Apprentice of the Year final, which has been taking place in Wellington, will this year be in Auckland in October. Apprentices, employers and those young people aspiring to be a part of the construction industry are encouraged to join up to the Facebook page at www.facebook.com/apprenticeoftheyear.



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Earthquake challenges made winning 'all the more rewarding'

Mark Metzger of Metzger Builders Ltd was "ecstatic" when his Christchurch entry was read out as winning not one but two categories in the Registered Master Builders PlaceMakers 2012 House of the Year.

Metzger Builders Ltd was awarded the New Homes \$1 million - \$2 million category and the PlaceMakers Bathroom Excellence Award, which was particularly rewarding for Mr Metzger after losing a full 10 weeks of work on the house due to the 2011 earthquakes.

"This property was hit hard by the February quake — we had to put in a claim to re-level and repair which cost us eight weeks," Mr Metzger says.

"Then the June earthquake happened and we had to put in another claim, costing us a further two weeks.

"The February earthquake, in particular, hit at a time that really hindered the process. It was such a challenge, but we got up and over it, and winning was all the more rewarding."

Metzger Builders Ltd has now picked up four national titles at House of the Year, in 2008 and again in 2009. Mr Metzger believes winning House of the Year awards is recognition for working hard and being particular about details.

"We place a lot of emphasis on detail when it comes to our homes. Even with earthquake repair work, we worked to the mentality that there is one standard, regardless of whether we are working on a repair or a new build. I think that attentiveness played a large part in our win," he says.

"You should never assume that because you won the previous year you will win again. We look at the House of the Year competition from the perspective that we should strive to better ourselves each year. Once you've reached the standard, the hardest part is staying there."

House of the Year judges saluted the home as immaculate, calling it "luxury living at its finest".

"This contemporary, four bedroom home is built for the sun, and much thought has gone into how a home needs to work for today's family. A very smart, elegant home, which is superbly crafted and finished by the building team," they said.

Mr Metzger believes winning House of the Year titles is fantastic recognition for his brand, and will continue to enter the competition.

"Once you start entering House of the Year, and especially if you get a bit of success, it becomes very addictive. We have two entries in the 2013 competition," he says.

"House of the Year is a great experience and a fantastic marketing tool,



Metzger Builders Ltd (MBL) won the New Homes \$1million - \$2million category in the Registered Master Builders PlaceMakers 2012 House of the Year.



and if you are willing to put the work in I would encourage anyone to enter. Similarly, if you don't do well one year you should pick yourself up and try again because it is so rewarding to win.

"It is such a morale boost for staff. My wife Ali and I strongly believe that our business is only as good as the staff we send out on site, and winning this award is something our staff can all revel in.

"For us, winning these awards is a team effort — we're so grateful to our wonderful staff, subtrades, clients and designers for the part they played in our House of the Year awards."

The Awards are made possible through the support of PlaceMakers, James Hardie, Gib, Nulook, MBIE - Building and Housing, Future-Proof Building, Carters, ITM, Plumbing World, Resene and Westpac.

For more information about the competition, visit the Registered Master Builders web site at www.masterbuilder.org.nz.



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Attention to detail the way to go

Colin Thom of Colin Thom Builder Ltd was confident that the workmanship of his Dunedin home was to a high standard, but still couldn't believe his ears when his name was read out as the winner of the Nulook Builder's Own Home Award in the Registered Master Builders PlaceMakers 2012 House of the Year.

Mr Thom believes there are a lot of skilled builders in New Zealand, and the high quality of entries made it all the more special to win.

"So many quality homes were entered in the competition, and I was honoured to win. As a builder, you never know where you sit in the marketplace in terms of quality, so winning was definitely a surprise too," Mr Thom says.

This is the second year Colin Thom Builder Ltd has entered House of the Year, and Mr Thom believes the experience and learning opportunities encountered in the competition are invaluable.

"Taking part and succeeding in House of the Year has been great for business. It has definitely lifted our business profile and created opportunities for us — we've seen a noticeable increase in enquiries from architects since the competition," he says.

"It's a lot of work, but it's worth it. Above anything, it has been an excellent learning experience for the entire team, and I would really encourage anyone thinking about entering to take part."



Leeann and Colin Thom



Colin Thom Builder Ltd won the Nulook Builder's Own Home Award in the Registered Master Builders PlaceMakers 2012 House of the Year.

Mr Thom says not a lot of homes are meticulous in their detail, and he believes it was this that made his Dunedin home stand out.

"The design and the site are pretty special, but I think it was the workmanship that ultimately won the award for us. There is a lot of attention to detail, a huge amount of timber work and an incredibly small margin of error. We worked very hard," he says.

"Winning the Builder's Own Home Award was special

because we had really tailored the house to our lifestyle. There is a lot of outdoor living and a lot of indoor-outdoor flow — we built it with a 'come home to be on holiday' mentality.

"Because I still had my other projects to keep on top of, entering the Builder's Own Home category was a lot of work and very challenging. Winning was a fantastic feeling — it was acknowledgement that our hard work had paid off."

House of the Year judges agreed that the workmanship and attention to detail played a large part in the Dunedin home winning the award.

"Produced to an exacting measure, the home flows down the hillside, stepping down four levels with rooms off both sides, but maintains a single pitched roof," they said.

"It is an amazing feat of design, construction and engineering — a stunning home, on a stunning existing landscaped site, stunningly designed and crafted."

Mr Thom says the business advantages of being involved with House of the Year and with Registered Master Builders in general are countless, and he will continue to enter the House of the Year competition.

"After what I have gained from entering House of the Year I will absolutely enter the competition again."

"It's fantastic to be involved with a brand that promotes quality — Registered Master Builders has a good reputation, and in winning a House of the Year category, that reputation is projected onto my business."

The Awards are made possible through the support of PlaceMakers, James Hardie, Gib, Nulook, MBIE - Building and Housing, Future-Proof Building, Carters, ITM, Plumbing World, Resene and Westpac.

For more information about the competition, visit the Registered Master Builders web site at www.masterbuilder.org.nz.

High Court ruling highlights importance of using accredited building surveyors

A High Court ruling against a building inspector who failed to identify a leaky home highlights the importance of using a suitably qualified building surveyor, according to the Building Officials Institute of New Zealand (BOINZ).

The High Court ruled recently that Mike and Sharon Hepburn and Tracey McKinnon had been misled by the inspection report for the property in Khandallah, Wellington.

The inspector had stated the house was in generally good condition, with some, mainly minor, remedial work required, and signed a certificate of inspection in accordance with the New Zealand standard.

Building Officials Institute of New Zealand (BOINZ) chief executive Nick Hill says the case highlights the importance of using only a suitably qualified and accredited building surveyor to carry out inspections.

"People need to be aware that even if an inspector claims to be an 'accredited building surveyor' (ABS) — although it is not suggested that was the case in this situation — or operates to the NZS4306:2005 New Zealand residential property inspection standard, that does not mean they are accredited," Mr Hill says.

"BOINZ has developed the ABS to provide home buyers with confidence in the quality of inspections undertaken, and bring much needed professionalism to this unregulated part of the building market.

"It is in the interests of the three key players in the property sale — seller, buyer and realty agent — to work with an ABS.

"Only by using one of these can you be confident that

your inspector has acquired the professional ability, education and standard of competence required to undertake building survey inspections in accordance with NZ Standard 4306:2005.

"This should also serve as a warning to property inspectors that, if they are referencing the Standard when carrying out inspections, then they can expect to be assessed against that if problems ensue."

The High Court heard that the Hepburns and Mrs Hepburn's sister Tracey McKinnon, agreed to buy the 260sq m house in 2007, conditional on a satisfactory pre-purchase inspection report.

What is BOINZ?

BOINZ is a membership-based and member-focused, not-for-profit charitable organisation, representing Building Control Officials in New Zealand since 1967.

The Accredited Building Surveyor programme is managed by BOINZ and is formal industry recognition of the professional ability, education and standard of competence required to undertake building survey inspections.

Once accredited, the individual will have undergone a stringent assessment procedure and will have successfully obtained accreditation as set out in the programme.

The accreditation process is managed by the Building Surveyors Accreditation Division (also referred to as the National Accreditation Division) of the Building Officials Institute of New Zealand. This process does not contravene the Privacy Act.

The real estate agent provided details for pre-purchase inspector Trevor Cunningham, a one-man business, based in Johnsonville, and operating as ABS Contractors and Cunningham Consulting Ltd (CCL).

Having received Mr Cunningham's report and, following verbal discussions with him, the purchase went ahead, with the buyers paying \$652,500.

However, in 2010 they decided to sell the property and received an offer subject to a satisfactory property inspection. That inspection, carried out by Realsure, a BOINZ-accredited surveyor, found serious weathertightness issues, subsequently confirmed by the Weathertight Homes Resolution Service (WHRS).

The owners also found that Realsure had also carried out inspections on the property for two other potential buyers shortly before they had purchased it, and both had withdrawn their offers due to issues outlined in those reports.

They launched legal action against Mr Cunningham and his business for breach of contract, negligent mis-statement and breach of section nine of the Fair Trading Act.

They also took action against the real estate agent Elizabeth Capovilla and Tommy's Real Estate Ltd. These were settled in 2012.

Justice Williams awarded the plaintiffs gross damages of \$364,649,53 plus interest, minus 50% in contributory negligence, due to the fact that they had not carried out remedial works recommended in the ABS report.

A final figure for damages will be set once the court has apportioned liability between the three defendants.



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news

Engaging in the rebuild: Seismics and the City 2013

The second annual Seismics and the City forum will be held in Christchurch in late March to provide an opportunity for organisations to engage in the rebuild process.

The theme for 2013 is When a City Rises. The strands are Looking Forward, Designing the Future, Clearing the Decks and Laying the Foundations.

Leaders from the public and private sectors will weave these into an exciting big picture of the rebuilding of Christchurch which will stimulate collaborative action.

The one-day forum will be held on Thursday, March 21, at the Addington Events Centre, followed by optional Urban Safari tours on the morning of Friday, March 22.

"As Christchurch shifts into rebuild mode after the destructive series of earthquakes, the one-day forum will provide information, insights and inspiration, plus opportunities for feedback and new ideas to help shape the future of a smarter and more vibrant city," according to forum convenor Lyall Lukey from SmartNet.

Forum speakers include Peter Townsend, CECC; Roger Sutton, CERA; Sir Mark Solomon, Te Runanga o Ngai Tahu; Tom Hooper, CDC; Joanna Norris, *The Press*; Rob Jamieson, Orion; Carolyn Gullely, CDHB; Dr Kelvin Berryman, GNS Science; Prof Jay M Feinman, US author of *Delay Deny Defend*; Tim Grafton, NZ Insurance Council; Sarah Miles, Author and Lawyer; Katherine Smith Dedrick, Risk World Wide; Emily Walton, Wynn Williams; Dr Ann Brower, Lincoln University; Craig Richardson, Wynyard Group; Prof Hirini Mahunga, Lincoln University; Jasper van der Lingen, Sheppard & Rout Architects Ltd; Nicole Lauenstein, urban designer; Michael Gorman, Christchurch City Missioner; Helina Stil, Nikau Contracting; Dr Katie Pickles, UC; and David MacDonald, executive member, Property Council New Zealand - South Island branch.

Fast moving plenary sessions will provide timely information and insights as recovery momentum builds. Open forums will offer opportunities for participants to voice issues, obstacles and solutions, and share new thinking.

Optional city and workplace visits give first hand experiences of a city which is a laboratory of change, and provide insights into the city's innovative response to one of New Zealand's worst natural disasters.

A social event at the conclusion of the forum will give registrants the opportunity for high level networking.

Sponsors and supporters include GNS Science, Canterbury Development Corporation, Orion, Canterbury District Health Board, Vero Insurance, Wynn Williams Lawyers, Canterbury Employers Chamber of Commerce, NZ Institute of Management, *The Press* and the University of Canterbury.

Aimed at representatives from public and private sector organisations, there are also a limited number of special rate registrations available for representatives of schools and community organisations, and interested individuals.

For more information visit www.smartnet.co.nz.



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Wall insulation key to warmer healthier homes

Including wall insulation in repairs to earthquake-damaged Canterbury homes will have a huge impact on keeping homes warmer and healthier, Beacon Pathway chief executive Nick Collins says.

Beacon has already successfully trialed the advantages of wall insulation, along with other upgrades, through its Build Back Smarter project, and it has been a huge success.

"The extensive repair and rebuilding required in Christchurch presents an opportunity to include upgrades which will improve a home's performance — we call this building back smarter," Mr Collins says.

The Earthquake Commission (EQC) recently announced they would be giving home owners the opportunity to install insulation in areas exposed during earthquake repairs.

"We congratulate the EQC on their decision to allow wall insulation to be installed during repairs, as home owners will see the benefits immediately, particularly as the weather gets colder," Mr Collins says.

The first of 10 earthquake-damaged Christchurch homes has been upgraded through the Build Back Smarter project, including wall, ceiling and floor insulation, a heat transfer system and double glazing. This has resulted in a much warmer home for a Huntsbury couple.

"Through Build Back Smarter, Helen and David Wells have noticed how much easier it is to heat their home and the impact this has had on their lifestyle," Mr Collins says.

"Previously the couple would heat their dining room/main living area with a woodburner and spend as much time as possible in this area while the rest of the house would remain cold.

"Mrs Wells used to put on a down jacket to go into the lounge to play her piano. Following the upgrades, Mr and Mrs Wells have noticed warm, even temperatures throughout the house, and even some health improvements, particularly with regard to sinus trouble."

The inclusion of wall insulation to the home added no extra time to the completion deadline, and was easier than expected.

"The extent of the damage and the desire by builders to undertake work quickly and efficiently means that wall linings are often removed rather than repaired, creating significant additional opportunity for installing wall insulation," Mr Collins says.

More than 60% of Canterbury's homes were built before insulation was mandatory, and most of these will have no wall insulation whatsoever.

"The greatest opportunity lies in installing wall insulation because it will make the biggest improvement to how the home performs, and is usually both inconvenient and expensive to install.

"For these reasons, wall insulation is often only undertaken during major renovations — a once-in-30-year event," Mr Collins says.

Beacon Pathway is an incorporated society committed to making New Zealand's

www.buildingtoday.co.nz



David and Helen Wells are pleased their repaired home included wall insulation. They are pictured with Beacon project manager Bill King (left) outside their Huntsbury home.



Wall insulation was installed by Community Energy Action into the Huntsbury home as part of Beacon's Build Back Smarter programme.

homes more resource efficient, healthier to live in and affordable.

Christchurch's Build Back Smarter project is a collaborative effort supported by the Energy Efficiency and Conservation Authority, the Christchurch City Council, Fletcher Building, the Ministry of Science and Innovation and the Christchurch Agency for Energy.

Community Energy Action is assessing the homes and undertaking insulation and heating retrofits.

For more information about the benefits of wall insulation visit www.beaconpathway.co.nz/existing-homes/article/wall_insulation, or to find out more about Beacon's Build Back Smarter programme visit www.beaconpathway.co.nz.

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Subcontractors call on Mainzeal liquidators to open the books

The Specialist Trade Contractors' Federation (STCF) has called on the Mainzeal liquidators to "open the books" and reveal how much the companies hold in retention payments.

Retentions are a widespread construction industry practice where a construction firm withholds part of a subcontractor's total invoice, unsecured and without interest, for up to two years after the subcontractor has completed their work.

STCF president Graham Burke says it is likely that

Mainzeal is holding millions of dollars in retentions, and called on liquidators BDO to be transparent about the sums.

"This is money that belongs to subcontractors and would have been paid out to them in due course but, because subcontractors are unsecured creditors, it is likely that this very significant sum will be used to pay secured creditors," Mr Burke says.

"When Alliance Construction was placed into liquidation last year, the liquidators disclosed that it was owed \$600,000 in retention payments, but owed over \$1.5 million in retention payments to

subcontractors.

"Given the significantly larger sums involved here and the high numbers of subcontractors affected, it seems reasonable that BDO should take a similarly transparent approach and disclose, in their report, the full extent of subcontractors' money retained."

In the wake of the Mainzeal collapse, the Federation has called for urgent changes to the practice of construction firms holding retention payments, either in the form of security for retentions held or the introduction of an alternative system, such as bonding.

Resene Group acquires a division of Nuplex Construction Products

Resene, the New Zealand-owned coatings company, has announced the acquisition of Plaster Systems Ltd (a division of Nuplex Construction Products).

"This acquisition is a logical and timely move for our group as it seeks to increase its presence in the construction products area, whilst Nuplex is looking to focus more on its core resin manufacturing business,"

according to Resene managing director and majority shareholder Nick Nightingale.

Additional manufacturing capacity

"Plaster Systems will fit seamlessly into our existing operation, which currently runs under the Rockcote Resene brand, and will bring along additional manufacturing capability.

"Plaster Systems has an excellent brand, product range

and experienced staff, including an experienced and professional network of contractors," Mr Nightingale says.

Integration of Plaster Systems into the Resene Group will occur over the next few months.

"Rockcote Resene and Plaster Systems clients will continue to receive the same high quality service and support that they have come to expect," Rockcote Resene general manager Mike Olds says.

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In 2011, 74% of new homes were designed for clients over 50 years of age. 85% of those designs included specific design features that will accommodate those clients as they age.

(*source: eboss 2011 survey)



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PlaceMakers Invercargill	Monday, 18 March	5:00pm - 7:00pm
PlaceMakers Gore	Tuesday, 19 March	5:00pm - 7:00pm
PlaceMakers Te Anau	Wednesday, 20 March	7:00am - 9:00am
PlaceMakers Queenstown	Wednesday, 20 March	5:00pm - 7:00pm
PlaceMakers Wanaka	Thursday, 21 March	7:00am - 9:00am
PlaceMakers Cromwell	Thursday, 21 March	5:00pm - 7:00pm
PlaceMakers Alexandra	Friday, 22 March	7:00am - 9:00am
PlaceMakers Riccarton	Tuesday, 26 March	7:00am - 9:00am
PlaceMakers Cranford St and Antigua Street	Tuesday, 26 March	5:00pm - 7:00pm
PlaceMakers Kaiwharawhara, Evans Bay, Porirua and Seaview	Wednesday, 27 March	7:00am - 9:00am
PlaceMakers Blenheim	Tuesday, 26 March	7:00am - 9:00am
PlaceMakers Nelson (Richmond)	Tuesday, 26 March	5:00pm - 7:00pm
PlaceMakers Motueka	Wednesday, 27 March	7:00am - 9:00am
PlaceMakers Ashburton	Tuesday, 2 April	5:00pm - 7:00pm
PlaceMakers Timaru	Wednesday, 3 April	7:00am - 9:00am
PlaceMakers Twizel	Wednesday, 3 April	5:00pm - 7:00pm
PlaceMakers Oamaru	Thursday, 4 April	7:00am - 9:00am
PlaceMakers Dunedin	Thursday, 4 April	5:00pm - 7:00pm
PlaceMakers Napier/Hawkes Bay	Tuesday, 9 April	7:00am - 9:00am
PlaceMakers Taupo	Tuesday, 9 April	5:00pm - 7:00pm
PlaceMakers Rotorua	Wednesday, 10 April	7:00am - 9:00am
PlaceMakers Whakatane	Wednesday, 10 April	5:00pm - 7:00pm
PlaceMakers Mt Maunganui	Thursday, 11 April	7:00am - 9:00am

Dates and times may change. Contact your local store for more information and to confirm session times.

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Blowing the whistle on kids' career choices

Kiwi youngsters are keen to put on a uniform but apparently not the new pink one that rugby referees are wearing as the 2013 rugby season gathers pace, according to poll results released recently.

As part of the new Pink Batts partnership with the New Zealand Rugby Union (NZRU) and New Zealand referees, they commissioned research company Perceptive to canvas the opinions of more than 500 Kiwi kids to explore how they rank being a referee compared to other career choices and, most importantly, why.

Pink Batts national market manager Dion Hurinui says in order to support the recruitment of tomorrow's referees it is important to get a snapshot of current perceptions.

"These research findings have highlighted some



New Zealand rugby referee Glen Jackson gives children at Cornwall Park District School in Auckland tips and insights into being a referee.

Photo: Frances Oliver

significant opportunities, which we are really excited about," Mr Hurinui says.

41% of primary school children surveyed ranked fireman, policeman, army, navy or air force in their top three career choices. Rugby referees were ranked as the least attractive career on the list.

When asked why rugby referee was not one of their top three choices, 31% said "don't know much about what they do," and 24% said that being a rugby referee "doesn't sound or look like much fun".

"We are very passionate about our new relationship with New Zealand's rugby referees, and we are keen to play our part to highlight the positive aspects of being a referee and their contribution to the game," Mr Hurinui says.

"We might even get these children to change their minds about refereeing."

New sponsorship deal

The new sponsorship deal sees Pink Batts sponsoring referees across the Investec Super Rugby, ITM Cup and Pink Batts Heartland Championship for three years.

The pink uniforms are being extended to referees in the Women's Provincial Championship, and Pink Batts also has naming rights to the Pink Batts Heartland Championship.

"Refereeing is actually a great way to be involved in the game," New Zealand's top referee Chris Pollock says.

"We work hard and train hard because it's a fast game, and we have to keep up! I get the best seat in the house, and we get amazing opportunities to travel and see the best teams in the world playing the game.

"This is a fun job with some great experiences, so if I can do my bit to encourage others to pick up a whistle then count me in," Mr Pollock says.

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Go Further

Weathertight Remediation: An

Article 5: Legal Risk Management

By Geoff Hardy and Gagan Tangri, Madison Hardy

The main risk builders face in undertaking leaky home repairs is that if further leaks develop later on down the track, the home owner will file a claim against them. This fifth article in the series based on the workshops by the Ministry of Business, Innovation and Employment - Building and Housing group that have been running at centres around New Zealand, focuses on how builders can effectively manage this risk.

Leaky home projects where the owner wants a cheap patch-up job done without a building consent are high risk, and you should stay well clear of them.

You want to undertake low-risk projects where a reputable building surveyor has done a thorough investigation and prepared a report on the causes of the leaks, an architect has prepared plans and specifications for the repair work, and a building consent has been obtained.

Although the risk of future leaks is much lower in these projects, there will inevitably be occasions where even a consented repair job won't turn out to be watertight in the long run. It therefore only makes good sense to protect yourself.

There are five main ways of doing that.

Your first protection is limitation periods — the law imposes time limits within which people must commence legal proceedings. For claims based on something that happened on or before December 31, 2010, if a claimant is going to bring a claim based on an alleged breach of contract, he has six years from the date when he says the relevant term of the contract was breached.

For claims based on negligence (ie, carelessness which caused someone loss that was reasonably foreseeable), the claimant has six years from the date on which the loss or defect became reasonably discoverable.

For claims that are based on acts or omissions after December 31, 2010, where the claimant is seeking a payment of money, the limitation period is six years from the relevant act or omission. But even after the six years have expired, if the claimant discovers (or should have discovered) that he has a claim, he has a further three years from then to file his claim.

However, where the claim relates to building work, no claim can be brought more than 10 years after the act or omission upon which the claim is based.

Second, you can protect yourself against liability to the current owners by inserting special clauses in your building contract, which clearly define your scope of work.

The special clauses should provide that you are only hired to do the work shown in the plans and specifications, not to comment on them, nor to point out any potential defects either in the repair work or in the rest of the house that is not

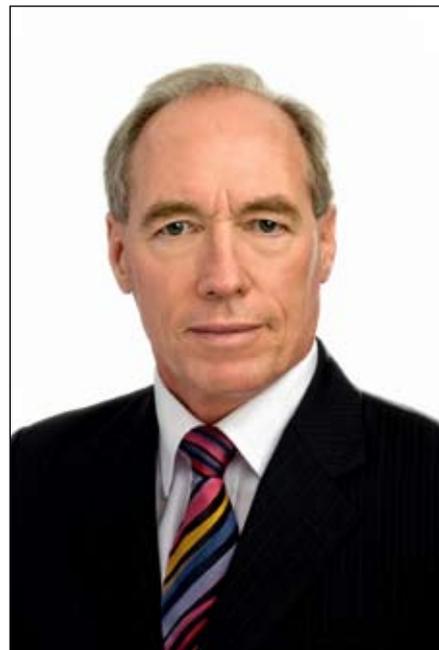
affected by the repairs.

The third way of protecting yourself is to have an insurance policy that covers you against the risk and consequences of your own errors and omissions (mistakes).

The first relevant insurance policy is known as a guarantee (or surety) that is offered, for example, by members of the Registered Master Builders Federation and Certified Builders Association.

These products protect the owner rather than the builder, and most do not cover weathertightness work. However, a "WaterTight Warranty" is now available.

The second relevant insurance policy is known as Errors & Omissions ("E&O") cover, or "professional indemnity". Unlike the surety products, this protects the builder rather



Geoff Hardy, of commercial law firm Madison Hardy.

introduction for builders

than the owner.

It covers you where you or your employees, contractors, subcontractors or suppliers have made a mistake, or put faulty components or materials into the building.

The fourth way of protecting yourself is by way of limited liability companies and trusts.

The whole idea of a limited liability company is to protect your personal assets from business risks. However, you cannot abuse the privilege of limited liability. For example, you cannot keep liquidating your company and replacing it with a new one for each leaky home job you undertake.

Second, a limited liability company offers no protection against claims brought against you personally if you had "hands on" involvement in the remediation work (ie, you worked on-site or issued instructions about how to do the remedial work).

The necessary safeguard in such a situation (which is typical in small owner-operator businesses) can be provided by a trust. When you put an asset (such as your house) into trust and you become a trustee, you hold that particular asset as a custodian or guardian for the people who really own it, namely the beneficiaries.

For that reason, your own creditors can't touch that asset, unless they can prove your trust is a sham, or you put your assets into trust for the purpose of defeating your creditors.

So your trust has to be genuine, and it obviously pays to create your trust when everything is rosy, rather than when the creditors are breathing down your neck.



Gagan Tangri, of commercial law firm Madison Hardy.

The fifth, and possibly the cheapest and most effective way to avoid future liability for leaks, is to be thorough in your work rather than economical.

These are the types of projects where overkill is more appropriate than economising. Hopefully you will be able to factor that degree of thoroughness into your pricing.

Note: This article, provided by Geoff Hardy and Gagan Tangri of Madison Hardy, a commercial law firm specialising in construction law, is not intended to be relied upon as legal advice.

Please note that the views and opinions expressed are those of Madison Hardy, and do not necessarily reflect the opinion or position of the Ministry of Business, Innovation and Employment – Building and Housing group, or *Building Today*.

For further information please phone 09 970 9569, or e-mail info@madisonhardy.com.

Wrap up: The sixth in this series of articles will discuss health and safety in the context of remediation projects.

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Win a free Business Management consultation!

Building Today's monthly offer to help companies in challenging times ahead!

In last month's issue of *Building Today*, RMBF president David Fabish said the industry was entering challenging times with increasing workloads, combined with increasing labour and material costs.

Firms that sign fixed sum contracts without fluctuations clauses that cover cost increases are vulnerable and exposed to risk, he said.

"Personally, in the past, I have seen many building companies go bust at this stage of the cycle," Mr Fabish said.

It's in everyone's interests that companies do not go to the wall at any stage of the construction cycle, let alone just when the industry is finally picking up.

So *Building Today* has partnered with Trades Coaching New Zealand to give something back to the industry, and to help those small to medium businesses that make up the bulk of our readership.

Every month, we'll be asking business owners to send us their contact details to go into the draw for a free consultation with a Trades Coaching New Zealand consultant, where they will be able to receive advice on any aspect of the running and management of their business.

This could be anything to do with owning a business, including marketing strategies, financial reporting and management, planning, team strategies, implementation and communication skills, and motivational solutions.

To go into this month's draw, just email andrew@buildingtoday.co.nz, with the words Trades Coaching in the subject line. The winner will be drawn at 5pm on Friday, March 29, and be announced in the April issue of *Building Today*.

We'll catch up with the winner after their consultation and find out how their session went, and what they got out of it.

So make sure you get your name into the draw now!

Andrew Darlington
 Publisher



One in three* builders will suffer a serious fall this year. Will you know what to do?

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BT's Back in Time

Welcome to Back in Time, where we delve into our magazine archives and discover what was making news way back when . . .

20 years ago:

- A timber shortage was the result of high export prices and an upswing in the construction industry.

NZMBF chief executive Trevor Allsebrook said it was ironic and regrettable that builders should be having trouble getting timber to build new homes, "especially when it is known that the country is producing more than enough for our needs".

15 years ago:

- Base isolation earthquake proofing was the state-of-the-art technology used on the new Museum of New Zealand in Wellington.

The museum was designed to withstand a one-in-2000-years earthquake, compared to the normal, lesser magnitude one-in-150-years protection.

Before building began, the site on reclaimed land next to Wellington Harbour was subject to intense compacting to a depth of 16 metres by having a 30-tonne weight dropped on it 50,000 times.

- Construction progress at the New Zealand Cup Village was exceeding expectations, ahead of the America's Cup in 2000.

America's Cup challenging syndicates were expected to begin moving into the village from June 1998. A new milestone was reached when a 100m breakwater wharf to provide a sheltered water environment for America's Cup boats was completed.

10 years ago:

- RMBF chief executive Chris Preston welcomed the release of the Ministry of Economic Development's discussion paper on New Zealand building industry regulations.

He said the move towards adjusting and setting standards for the building industry was a positive one.

"We agree there is a need in the wider industry for change, and that alterations need to make the design, materials, systems and workmanship components of the building process more accountable," Mr Preston said.

5 years ago:

- Craig Shorrock of Auckland, one of the first builders to successfully register as a Licensed Building Practitioner, was presented with his own "licence to build" by Building and Construction Minister Shane Jones.

"I've come to grips with building in steel and seen the benefits."

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With a few jobs under his belt, Cocksy's now just as confident building with steel as he is with timber. Check out the video tips at www.axxis.co.nz/videotips to learn some of the skills and tools needed to make it easy working with steel framing. You'll never turn away a steel framed job again!



Innovative timber products range launched

Abodo, a company specialising in natural timber, has introduced Elements, an innovative, carbon-negative range of timber building products designed to help create greener, healthier and more beautiful buildings — with more wood and fewer chemicals.

From the FSC-certified plantations where the timber is sourced, to the low-impact, non-chrome, non-arsenic preservation treatments used, and the industry-first timber recycling programme Abodo manages, the Elements range works with nature to provide beautiful wood products that are liveable, durable and renewable.

Abodo marketing director Daniel Gudsell says the range was created in response to the growing trend internationally to restrict the use of toxic wood preservatives that pose a significant risk to people and the environment — what he calls “nasty wood”.

“As a New Zealand company with a strong interest in sustainability, we feel passionately about creating a product that is designed for the future — that means not only one that is going to last a long time, but is also going to have the least possible impact on our planet,” Mr Gudsell says.

Featuring a wide selection of high grade decking, cladding and structural timber products, Elements has been created in line with this philosophy, yet is built to stand the test of time.

Elements products are guaranteed for 30 years, with an expected service life of 50 years.

The result is an innovative range of timber products that can be used to create a warm and inviting outdoor living space, a striking architectural exterior finish or a durable substructure for homes, light commercial or landscape building projects.



The Elements range:

Decking

Elements Sand decking timber is a high grade decking solution available in a selection of beautiful, contemporary profiles. Elements Sand is treated with 100% penetration using non-chrome and non-arsenic wood preservatives, and kiln-dried to give superior performance and surface finish.

Elements Sand+ is created from vertical grain timber and is suitable for residential and light commercial construction, the benchmark in high quality decking. Elements Sand+ is also available prefinished with two

coats of plant-based oils and natural waxes.

Cladding

Elements Sand+ cladding timber is created from clear sapwood, and is engineered with vertical grain orientation to enhance the natural wood grain features. A unique patented manufacturing process creates a natural timber weatherboard with superior stability and enhanced long-term performance.

Available in five stylish profiles to allow a particular desired look, Elements also has a range of finishing mouldings and accessories to provide a continuous aesthetic finish to any project.

Structural

Elements Engineered Structural timber is created by bonding pre-preserved individual lamina with high performance, formaldehyde-free adhesive. As a result, Elements Engineered Structural timber boasts superior strength and stability, and is available pre-sealed with ClearPrime, the latest in wood primer technology.

Alternatively, the standard Elements Structural timber is a pressure-treated and kiln-dried structural timber, suitable for decking substructures, pergolas and other outdoor constructions.

Elements products start from RRP \$35 per square metre. For more information, visit www.abodo.co.nz.

Be prepared for UFB: Ready your business

Ultra Fast Broadband (UFB) is bringing the next generation of broadband internet and network connectivity technology to Kiwi businesses.

It uses fibre optic cables to transmit data instead of a copper phone line, which allows more data to travel more reliably every second.

UFB will be particularly important for small and medium enterprises because it allows affordable access to business benefits previously only available to big companies.

The benefits UFB will bring for New Zealand businesses include:

- Faster and more responsive upload and download speeds.
- Multiple users on more devices.
- Online back-up and disaster recovery.
- Remote working and access content anywhere.
- Easier web site management.

- Smoother streaming of online-hosted video content.
- In thinking about if UFB is right for your business, you might want to consider the following tips for readying your business:

Your business systems and processes

It's a good idea to consult with your electrician about the ease of installing UFB the next time they are onsite.

They may be able to make changes at the time you are doing other work, which would limit additional, unexpected costs and time spent on wiring during installation.

Access into the business

Depending on where your business is located, your requirements and the type of fibre infrastructure available nearby, there are two primary methods of delivering fibre into your business — through an underground connection or via overhead wiring.

Each of these will require particular planning and consideration to minimise disruption to your operation. Installation companies like Chorus will need to check in with your property manager and other tenants too.

Business broadband now for changing needs

How much data is your business using on your broadband connection now, and how is that growing? Due to a combination of reasons, with UFB your business may begin to use more data.

As you think about upgrading your technology, it's a good time to review your data use and adjust your plan to support your business' changing internet needs.

To find out if UFB is available in your area and right for your business, your local Telecom Business Hub can guide you through these considerations.

For more information, including latest coverage information on UFB, visit www.telecom.co.nz.

To buy or lease? That is the question

Your vehicle shouldn't be an administration business burden. It needs to be reliable, effective and efficient.

Half the battle is in effectively assessing whether leasing is the right option for your business. Still, it's a good business maxim to "lease what depreciates and own what appreciates".

When you buy a vehicle outright you pay for the entire value of the vehicle, which brings with it a high up-front cost. This cost can either be in the form of full payment at purchase or a down payment and then monthly payments thereafter.

Opting for the monthly payments attracts additional fees determined by your financier. However, on payment completion you can decide to sell or trade

the vehicle for its resale or trade value.

In contrast to buying, when you lease you only pay a portion of the vehicle's cost, which is the part that you utilise during the term of the lease.

Funds can be liberated when vehicles are leased, and the cash can be re-employed within the business.

When negotiating your lease you stipulate the term you want the lease to run, as well as anticipating the number of kilometres you will travel during the term.

At the end of the lease you may return the vehicle or purchase at a negotiated rate by your leasing partner.

Benefits for businesses

Leasing has benefits for businesses for a variety of reasons, including:

- Your vehicle leasing partner will take all the risk associated with the re-selling of your vehicle. You will have the option to either upgrade your vehicle at lease end, or purchase it outright from your leasing partner.
- Your leasing partner will also take on all mechanical maintenance on the vehicle, with these costs being included in your monthly lease rental.
- Leasing provides surety around costs — a monthly lease rental is a fixed cost during the term of the lease, allowing businesses to budget more effectively.
- Leasing also allows your vehicle to be recorded "off balance sheet".

To find out if leasing is for you, contact FleetPartners for a free, no obligation quote today. Call toll free on 0800 322 277, or visit www.fleetpartnersnz.co.nz.

The cheaper the better

Architect **Don Bunting** rattles off some more random observations about the construction and associated industries. This month he poses the question: Which industry is based around the premise that cheapest is always best?



Question. Which industry is based around the premise that cheapest is always best? Answer. The construction industry. Add profit margins often of less than 2% and it's no wonder we have some pretty shonky buildings and any number of building contractors operating on the cliff-edge of insolvency.

I wonder how many of today's building contracts are based on calling invited tenders among a group of well-established companies whose reputations for high quality workmanship and fair dealing are known to both owner and contract administrator?

And yet that apparent dream world was once common practice for any major construction contract. What happened? The 1980s happened.

If ever there was an era known for bad fashion and bad design/building practices it was the 1980s. Style over substance and a liking for wide shoulder pads applied to fashion and building design. In the case of 1980s buildings, the "shoulder pads" were more a predilection for adding bits of irrelevant post-modern flash and dash to the building's facade and parapets.

Our industry has now been left with some very bad habits, of which a liking for "cheapest is best" is arguably the worst. There has already been much said about the leaky buildings issue, but cause and effect were inevitable when a desire for smooth, flat facades was answered by installing cheap, inadequate materials by inadequately trained and supervised workers.

I wouldn't insult the many good practitioners in our industry by calling those involved tradespeople.

With the greatest sympathy for those suffering from the downside of an era of bad building practice, the "other client" in all this is also suffering. By other client I mean the public.

Take a stroll down Auckland's upper Hobson Street, or Beach Road — or similar urban areas in other cities — and you will see what I mean.

Auckland's streetscape and many of its public areas have been permanently, visually blighted by the erection of some really badly designed and shoddily built buildings.

The public effects of accepting cost before quality is more subtle and even more intrusive than that. Cheap, badly laid paving, grotty, badly finished interior and

exterior surfaces, cheap fixtures and fittings all affect our enjoyment of public buildings and public spaces.

There is a new brand of golf club on the market advertising itself as "the most expensive and the very best club you can buy". This Louis Vuitton-type marketing approach, where a company unashamedly presents itself as elitist, has been very successful.

The golf club brand in question is now outselling even more famous brands promoted by leading professional golfers. The secret was in making the product just a bit more expensive, but still well within reach, of a critical mass of golfers.

You may not be able to afford a Ferrari but you can afford a golf club brand only 10% more expensive than others.

Perhaps there is an answer here for our much maligned industry. We have been our own worst enemy, allowing cheapness to come before quality. I could surmise why this happened and how it might be overturned, but I am not confident that my profession and my industry has the will to say no to cheap and nasty, and yes to minimum levels of building quality.

I am not talking about our Building Code, which is rightly focused on minimum standards of health and safety. There were attempts to implement the concept of amenity but this is very difficult to define in a

technical sense.

Sadly, my profession, other design professionals and their clients cannot seem to accept that codes set minimum standards. A building code has a much narrower focus than the broader considerations needing to be applied to our built environment.

The urban design task force is one attempt to raise design standards in Auckland's central city. While having its successes, current economic conditions have been more successful in preventing some recently ill-considered projects from proceeding than any well-meaning expert panel.

The panel do not have the ability to determine whether a really good design has been a convenient vehicle for some cheap and shoddy material choices.

Change will only come in our industry when a more inclusive way of realising building projects becomes the norm. Whether a design/build approach or a conventional tender route is chosen, standards will only be raised if the word "quality" always ranks alongside the word "cost".

Breach of contract?

From page 30

Smeaton should have permitted GPL to complete their contractual obligations, rather than remove them from the job.

However, having prevented GPL from doing so, it followed that Smeaton could not claim the extra costs that they took on as a consequence of banning GPL from the site. Accordingly, this contractual claim failed as well.

Personal liability

It is noted that Smeaton attempted to claim against Mr Pasquale (sole director and shareholder of GPL) personally in negligence, but this claim was quickly dismissed by the Court.

Conclusion

This decision brings to the forefront some important

principles to take into account when considering issues surrounding breach of contract.

In particular, it is important to consider whether the obligation that is alleged to have been breached actually falls within the scope of responsibilities imposed by the contract.

In addition, a practical approach may need to be given to situations where a party makes a mistake in carrying out construction work under the contract, such that they may need to be given the opportunity to rectify that mistake.

Of course, while not every mistake may necessarily amount to a breach of contract, it is still critical to keep in mind the duty to mitigate loss.

NOTE: This article is not intended to be legal advice (nor a substitute for legal advice). No responsibility or liability is accepted by Legal Vision nor *Building Today* to anyone who relies on the information contained in this article.



Getting glassy-eyed in Cairns

Dr Kerry Rodgers reflects upon a northern Queensland award winner

November-last found me in Cairns. I had headed north to experience the eclipse but fate and Air New Zealand decreed I spend 24 hours clouded out in Cairns. I passed time at the Flecker Botanic Gardens in the north of the city where I reflected upon their award-winning visitors centre.

In June 2009 the Cairns Regional Council conducted a limited competition for the design of a new visitors centre for the Cairns Gardens. Among those invited to contribute were Charles Wright Architects (CWA). It was their contribution that best fulfilled the council's desire for "a memorable piece of tropical architecture that would blend seamlessly into the surrounding environment".

The site was constrained by existing paths, roads, easements, mature trees and a difficult gradient. This made the functional brief very tight. As described on their web site, CWA proposed a mirrored facade that would literally reflect the surrounding gardens. The building would have a "visual effect similar to the suit worn by the alien hunter in the original 1987 Predator film".



Mirrored entry

The architects were remarkably successful in achieving a long, low, reflective building that blends seamlessly with the surrounding environment. Every aspect of the building is clad with mirror. In fact, Cairns' bird watchers have expressed concern that some of their feathered friends might collide fatally with the mirrored facade while in flight.



Mirrored rear

For humans it provides what is tantamount to a camouflaged gateway that opens to a pedestrian promenade linking the gardens with the adjacent Tanks Arts Centre. And it offers a year-round cool and dry zone for visitors, in contrast to the often hot, wet environment of the gardens. It houses a cafe terrace, information and exhibition space, plus offices for council staff.

www.buildingtoday.co.nz

Importantly, CWA worked with its mechanical, structural, hydraulic and landscape consultants to incorporate a series of Environmentally Sustainable Design Initiatives into the mirrored canopy. These include solar panels for feedback to the energy grid, stormwater harvesting tanks, mixed mode air-conditioning systems, low energy light fittings, low water usage fittings, long life cycle efficiency materials and construction, solar treatment to all windows, naturally ventilated circulation corridors, and internal shaded, exposed thermal mass design.



Mirrored soffit

Since its opening, the building has received much favourable comment in Australia and overseas. It has been listed among Australia's top 10 buildings, and in November was declared Building Of The Year in the Commercial Construction \$5m - \$10m category at the Master Builders of Australia National Excellence Awards. It had already picked up the 2012 Eddie Oribin Award for Building of the Year presented by the Australian Institute of Architects.

One jury observed: "A courageous and radical departure from classic crafted and lightweight Queensland visitor centres, this alternative approach to environmental fit has clearly generated a potent sense of place and use of light. It exhibits outstanding working and visitor environments within a clear sustainability ethos."



Mirrored terrace

Other awards to date include:

2012: AIB - QLD High Commendation - Commercial Construction \$1m - \$10m

2012: MBA - QLD Excellence Award (FNQ region) - Excellence in Sustainable Building

2012: MBA - QLD Excellence Award (FNQ region) - Tourism & Hospitality Facilities over \$5m

2012: MBA - National Excellence Award - Commercial Construction \$5m - \$10m

It is well worth checking out on either the builder's (www.hansenyunken.com.au) or architect's (www.wrightarchitects.com.au) web site.

Breach of contract?

Tim Bates and Katrin Saran Lee of Auckland law firm Legal Vision examine a recent High Court decision in which the High Court was required to consider whether a subcontractor had breached a contract with the builder in respect of stonework and concrete floor polishing on a residential construction project.



Smeaton Construction Ltd v Garrett Pasquale Ltd & Another [2012] NZHC 3079 is a case well worth a read as the court, in assessing whether there was a breach of contract, was called upon to carefully consider the scope of the subcontractor's contractual responsibility, and whether a mistake by the subcontractor in carrying out the work under the contract necessarily amounted to a breach.

Overview

Mr Coburn (representative of the Coburn Family Trust) had entered into an agreement with Smeaton Construction Ltd (Smeaton) to build a luxury home at Jack's Point, Queenstown.

Smeaton, in turn, engaged Garrett Pasquale Ltd (GPL) to complete the stonework and the polishing of extensive concrete floors.

A dispute subsequently arose between Smeaton and GPL in respect of a pool deck surrounding the swimming pool, and the upper deck.

Almost as soon as the concrete was poured for the deck surrounding the swimming pool, cracks began to appear. As a result, the decking around the pool had to

be cut up, removed, and replaced with a new deck

In respect of the upper deck, an error had been made by GPL in the application of sealants, in that water had got under the seal and mottled the surface.

GPL made an attempt to fix the problem and was intending to do further work on it, but they were prevented from doing so, and the problems with the upper deck were eventually rectified by Smeaton.

Smeaton sought to recover damages from GPL, but the District Court dismissed Smeaton's claims and Smeaton accordingly appealed to the High Court.

Scope of contractual responsibility

In respect of the pool deck, the issue before the court was whether it was within the scope of GPL's contract with Smeaton that GPL would take control of, and be responsible for, the concrete mix itself.

That issue was essential because it was alleged that the additives in the concrete mix caused the concrete on the pool deck to crack.

Judge Fogarty noted that the starting point of any analysis of contractual responsibility needs to be an examination of the formation of the contract itself. After taking into account a number of factors, the judge held that there was no intention between Smeaton and GPL to have a legal relationship in contract whereby GPL took responsibility for the formula for the special mix of concrete and its placing.

According to Judge Fogarty, it was plain that Smeaton never contracted the responsibility for the formula for the mix and its placing to GPL. It followed from this that GPL was never put in a position where it assumed the responsibilities of designer of the concrete for the purposes of the Building Act 2004 and New Zealand Standard 3104 (setting out responsibility for concrete mix designs).

Those specifications were prepared by a firm of engineers, and were the joint responsibility of that firm and the builder (Smeaton). GPL had no contractual liability for the cracking that had occurred and, hence, no liability in contract for the defective construction of the pool deck.

Mistake as a breach of contract

In respect of the upper deck, GPL had applied a

penetrating sealer to the deck. However, following that, it applied a "topical sealant" prematurely. As a result, rainwater was able to get under and lift the sealant.

To remedy that mistake, GPL ground off the sealant and then applied two coats of sealant, thinking that this would be sufficient. It was not sufficient, and GPL sought to go back and apply a third level sealant.

However, Smeaton had lost confidence in GPL by reason of the troubles with the pool deck, and GPL was prevented from completing that third level of sealant. Instead, Smeaton had the work completed and sought to recover the cost of that (\$25,000) from GPL.

Judge Fogarty started the contractual analysis by noting that where a party breaches a term of a contract, the other party to whom the obligation is owed has a duty to mitigate the loss.

Accordingly, if GPL had breached the contract, Smeaton was not obliged to continue with GPL but could mitigate the breach by taking action at its expense, suing GPL in default for the cost.

However, the first step in that analysis involved answering the critical question of whether or not GPL was actually in breach of the contract by prematurely applying the first layer of topical sealant.

Judge Fogarty took a practical approach to this issue, noting that competent tradesmen make mistakes, and that making mistakes is not normally described as a breach of contract.

The normal procedure in such instances is for the tradesmen to simply get on and rectify the mistake at their own cost (otherwise the building industry would collapse if every time a tradesman made a mistake the employer brought in another tradesman to fix it).

The judge noted that an employer is not obliged to give tradesmen endless opportunity to fix problems, and if it becomes apparent that the tradesman cannot fix a problem, then the employer is entitled to employ another tradesman to do it.

But, in this instance, the court was of the view that GPL would have, in fact, had the opportunity to apply a further coat of sealant and otherwise discharge their obligation to ensure the sealer system performed but for the breakdown in the parties' relationship over the poolside deck.

The High Court agreed with the District Court that

Continued page 27

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Building Consents Information

For All Authorisations, January 2013

Dwellings	\$509,795,000
Domestic Outbuildings	\$6772,000
Total Residential	\$516,566,000
Non-residential	\$223,294,000
Total All Buildings	\$739,861,000
Non-building Construction	\$39,111,000
Total Authorisations	\$778,972,000

Number of new dwellings consented

	Jan 2013	Dec 2012	Jan 2012		Jan 2013	Dec 2012	Jan 2012
Far North District	7	12	8	Horowhenua District	3	6	4
Whangarei District	36	39	21	Kapiti Coast District	7	18	8
Kaipara District	12	7	13	Porirua City	13	9	11
Rodney District	100	153	71	Upper Hutt City	21	6	5
North Shore City	30	27	23	Lower Hutt City	9	7	3
Waitakere City	52	82	31	Wellington City	24	65	18
Auckland City	83	54	41	Masterton District	9	1	6
Manukau City	32	39	34	Carterton District	6	5	6
Papakura District	51	56	23	South Wairarapa District	3	4	4
Franklin District	33	28	11	Tasman District	21	24	22
Thames-Coromandel District	8	12	2	Nelson City	23	18	13
Hauraki District	0	1	2	Marlborough District	7	12	11
Waikato District	20	11	17	Kaikoura District	4	3	1
Matamata-Piako District	7	7	14	Buller District	1	3	11
Hamilton City	29	70	40	Grey District	0	0	2
Waipa District	21	18	15	Westland District	5	2	4
Otorohanga District	1	2	2	Hurunui District	14	12	7
South Waikato District	1	1	4	Waimakariri District	103	78	67
Waitomo District	2	1	1	Christchurch City	152	96	209
Taupo District	6	12	7	Selwyn District	58	57	49
Western Bay of Plenty District	25	18	5	Ashburton District	20	16	11
Tauranga City	54	45	48	Timaru District	14	13	27
Rotorua District	8	8	8	Mackenzie District	9	4	4
Whakatane District	1	2	3	Waimate District	2	2	3
Kawerau District	0	0	0	Chatham Islands Territory	0	1	0
Opotiki District	0	0	1	Waitaki District	6	5	5
Gisborne District	2	15	12	Central Otago District	10	8	5
Wairoa District	3	0	0	Queenstown-Lakes District	36	41	30
Hastings District	11	12	14	Dunedin City	12	23	13
Napier City	9	10	8	Clutha District	1	2	2
Central Hawke's Bay District	3	2	3	Southland District	4	5	6
New Plymouth District	28	21	17	Gore District	0	4	1
Stratford District	1	1	2	Invercargill City	4	19	3
South Taranaki District	7	4	2	Area Outside TA	0	0	0
Ruapehu District	1	2	0				
Wanganui District	1	8	3	Total	1312	1381	1098
Rangitikei District	0	3	1				
Manawatu District	14	9	8				
Palmerston North City	12	15	13				
Tararua District	0	5	2				

- Based on 2006 census areas
- Each dwelling unit in a housing project is counted separately
- Figures in these tables may differ from published statistics

Source: Statistics New Zealand

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