

In the matter of an Arbitration

The seat of Arbitration is in England & Wales

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; 15th April 2020

Between;

XXXXXXXX

(the 'Consumer')

And

Wish Global Construction Ltd

('First Respondents')

XXXXXXXXXXXX

('Second Respondent')

XXXXXXXXXXXX

('Third Respondent')

DECISION

Introduction and background

This is a dispute arising from building works carried out on the Consumer's home. The Consumer states that the *trader* failed to carry out the works properly. I have used the word *trader* as a general descriptive term in this Decision meaning the party who carried out the works because there is a dispute as to the identity of the contracting party.

The Consumer in his claim form has named all three Respondents as the contracting party. The Second and Third Respondents are both directors in the First Respondent company. It is not clear what part the Third Respondent played in the supply of work and materials but it appears that the Second Respondent is the party with whom the Consumer had all dealings. In what capacity the Second Respondent acted falls to be determined herein.

The alleged defective works

The Consumer sets out quite an extensive list of issues with the work carried out by the trader in the claim form submitted to the London Arbitration Centre ('LAC'). The Consumer stated:

XXXXXXXXXXXX (who either goes by XXXXXor Adam) and WG Construction began work on our property on 9th July 2018 for extensive renovations. There have been a huge amount of things gone wrong:

By email dated 16th December 2019, I directed the Consumer to organise the items of defective work into schedule setting out each of the items of defect, the evidence relied upon in relation to that item of defect and the loss claimed in relation to that defect. I return to the schedule below.

The Consumer also stated in the claim form:-

XXXXX(Adam) XXXXX has consistently refused to address any of the issues, demanded additional payments and payment plans before doing anything. Refused to instruct an engineer, refused to have any kind of recorded meeting, turned up in January for a meeting then refused to follow up on the agreements made and then denied them, consistently lied and made up stories in emails, refused to provide any certificates for work completion e.g. electrics, EPC, floor plan submissions to building control etc (it transpired that he did not use a qualified electrician for the work and also had not done any kind of calculations on the roof work XXXXXXXXXXXX / WG Construction designed and therefore there was nothing to submit). XXXXXXXXXXXX has refused to enter into any kind of ADR scheme with us and is refusing to discuss anything unless we either pay or agree to pay him more money.

Under the heading *How the Trader affected the Consumer* in the claim form, the Consumer stated as follows:-

This has had a huge impact on us. Financially this has cost us over £20,000 to rectify the issues created by XXXXXXXXXXXX. The work was meant to take 7-11 weeks. He walked off the job after 15 weeks and we were left with an unfinished and unsafe house - structurally and electrically unsafe. We have had to spend over a year trying to get this rectified and having to find capable people to fix the disaster XXXXXXXXXXXX left behind. This was our first year of marriage and we have spent that year and ever since with the shadow of fixing the disaster that was meant to be our luxury home.

Under the heading *How the Trader should put things right* in the claim form the Consumer states as follows:-

A full refund of moneys paid plus payment for damages.

A short record of the relevant communications with the parties in this ADR

I should make the brief observation at the outset that the Second Respondent is not fluent with his English language skills but I do find that he can express himself sufficiently clear and that he can also sufficiently understand what his being put to him.

27th November 2019 - the Second Respondent agrees the process of ADR. Beneath his name, Mr XXXXX gives his qualifications 'BSc (Hons) Construction Project Management'.

3rd December 2019 - the Second Respondent asks for the invoice in relation to the ADR fee to be sent to 'WG Construction. 172-174 Granville Road Golders green London NW2 2LD'. This prompted an exchange between the parties themselves. A Certificate of Public Liability Insurance is provided by the Second Respondent in the name of 'Wish Global Construction Ltd trading as WG CONSTRUCTION'. The period of cover is shown from 19th October 2017 to 18th October 2018. The Consumer stated (under an email marked 'Without Prejudice'): "The email you have sent as "proof" refers to the insurance schedule you sent me prior to work starting that you said covered your work....."

4th December 2019 - A signed consent form to submit the dispute to ADR was requested from all three Respondents named above. The parties were also advised that LAC had received payment of the ADR from 'XXXXX' being the name shown by the receiving bank.

5th December 2019 - The parties were informed not to copy in the LAC in communications between themselves. The Consumer was also advised not to use 'Without Prejudice' in his communications with the LAC. The Consumer was advised "It is a term used when the parties are in negotiation over a settlement."

11th December 2019 - The Second Respondent was advised that if the signed consent form by the Second and Third Respondent was not provided then I would "...decide whether there was compliance with regulation 25 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015".

14th January 2020 - the Consumer's statement of case and evidence was received pursuant to my direction dated 16th December 2019 in the form of a USB stick.

16th January 2020 - I gave directions for the Response. I specifically requested the Response be accompanied by the following documents:

- (a) A copy of the online advertisement referred to by the Consumer in the first sentence of his document headed 'Full details of the contract with the trader';
- (b) A copy of any bank statement for account number 71753525, sort code 40 03 11 showing the account name; and
- (c) Documentary evidence (if any) showing how payments made by the Consumer have been accounted for by Wish Global Construction Limited.

I also directed that the trader advise if access is needed to the Consumer's property for the purpose of collating evidence or instructing an expert to examine the items of damage claimed. The trader did not subsequently seek such inspection.

31st January 2020 – the trader responded with his Response to the claim.

2nd February 2020 – I repeated a request to the trader to supply a copy of the bank statement previously requested in my direction dated 16th January 2020. I also asked for more information about the 'end point' document. This was because I understood the trader was alleging that a meeting had already occurred at which damages and/or compensation had been agreed with the Consumer.

10th February 2020 timed at 14.02 – the trader stated:

Payment of ADR paid from my personal account due the course the first payment from WG construction account has not gone through and then I had to make the payment of the amount requested immediate effect to avoid legal action against my company I direct and avoid increase of the amount...

And

Prior to the start of the work all meeting held in the WG Construction office and client property. Payment were made to the WG Construction trading name of Wish Global Construction Ltd account 50% and 40% cash and in the company and 10% and change order amount still outstanding. Bank statement available upon request.

10th February 2020 timed at 14.01- the trader stated:

*In addition, to the previous email dated 31/1/2020 and evidence given to you please find the following in responding to an email dated on 2/2/2020.
Bank statement, payment method and accountancy will be attached separately.*

'End of Point' and 'A3 completion sheet' these two documents agreed on-site with Richard XXXXX and I on behalf of WG Construction Ltd on the 27/10/2018 finalising the project and any outstanding issue putting the project to the end point as Mr R XXXXX, his wife Helen and I on behalf of WG Construction agreed to terminate the work giving them deduction from the total of any uncompleted or unsatisfied.....

10th February 2020 timed at 14.34 – the trader provided a screenshot of a bank statement of Wish Global Construction Limited for the period 15th April 2018 to 14th May 2018. This was initially supplied only to LAC but I subsequently decided that the document should be disclosed to the Consumer (after hearing from the trader on my proposed direction).

3rd March 2020 – the Consumer Replied to the Response under cover of three emails timed at 17.08 and two timed at 17.10.

5th March 2020 – I advised the parties that no further submissions were required and a decision would be made within 70 days of the traders Response.

19th March 2020 – The Consumer provided evidence that the trader had filed dormant accounts with Companies House for the period in which the work was carried out at his property. The Consumer also called into question the authenticity of the Bank Statement previously disclosed by the trader on 10th February 2020.

The claim of alleged defective works

The Consumer has provided a USB stick containing 20 folders. The folders number F2 to F19 contain the evidence in support of the items of defect listed in the schedule contained in Folder 1 which I have copied below. Item 2 is supported by the evidence in Folder 2 and so on. Item 1, stud wall removal is the only exception where I understand this to be a claim by the Consumer for a refund.

Item No.	Evidence folder	Description of defective work	Original Cost	Cost of rectifying defective work	Rectification description
1		Stud wall removal - charged for structural assessment by engineer but no qualified engineer assessed or reported on this wall	£700	£700	Refund
2	F2	Skimming of ceilings very poor quality - not satisfactory	£1,420	£1,200	£400/room x 3 rooms
3	F3	Redecoration having to be completely redone throughout home. Very poor quality finish throughout, cheap paint used by Ahmed Abdullah instead of the Dulux paints promised when quoting for the works	£8,100	£4,850	Proper preparation and painting throughout the home
4	F4	Ensuite - plumbing failure to shower - wrong pipe size installed from Megaflo to new shower meaning overhead shower does not work fully - installed 15mm pipe from Megaflo, attached expander joint to take it to 22mm to match mixer unit, compressed it to 15mm pipe on mixer output to run to overhead shower then another expander joint to take it to 22mm overhead shower connector - no pressure left by this point! Shower and bath waste pipes under flooring not fully connected to main waste downpipe meaning a significant percentage of shower and bath water was escaping down the outside of the waste pipe under floor/behind walls and causing water damage to downstairs toilet and living room. Damages for replacement of downstairs toilet ceiling and cornicing - negligent waste pipe connection plumbing rectified through insurance	£3,500	£1,070	Downstairs toilet: Coving £74.80 Plasterboard £36.77 Labour & plastering £350 Ensuite: Replacement showerhead 15mm compatible £96.90 Plasterboard £36.77 Labour & plastering £350 Plumber £125
5	F5	Electrics - Ahmed Abdullah employed an illegal, uncertified sub-contractor who breached a minimum of 4 electrical regulations leaving the property electrically unsafe (including un-earthed circuits and exposed wires between 1st floor ceiling and attic flooring) and will need to be rewired as a result of illegal electrician used. Damages are for additional electrical work required to make the home safe to occupy in the short-term	£3,912	£4,968	Refund for illegal, uncertified sub-contractor plus costs for short-term safety
6	F6	Plumbing - Megaflo system & radiators. Kitchen and laundry room radiators installed poorly. No radiator installed in attic. Wrong radiator sizes installed in bedrooms 3 & 4 meaning pipework is at wrong distance. Megaflo system installed incorrectly with wrong size pipe feeds (15mm instead of 22mm) resulting in no water pressure, even though mains supply pressure is sufficient for Megaflo. Heating and Hot Water wi-fi controller only connected to heating. Damages for purchase of additional pressurised cold water tank to have any kind of useable water pressure	£1,750	£1,040	Additional pressurised tank £720 Refund for 4xradiator installation
7	F7	Wood flooring downstairs installed incorrectly	£1,125	£1,758	£1758 for flooring work
8	F8	Tiling in porch laid squint and having to be redone	£280	£185	£85 tiles plus labour, adhesive & grout
9	F9	Downstairs toilet - floor tiles discoloured and stained - wall tiles poor quality - tile trim all scratched - cabinets damaged and unprofessional finish - whole toilet had to be stripped out and redone	£750	£600	Whole toilet had to be redone c.£1600, but only requesting £600 refund
10	F10	Attic space - breached a number of building regulations including the removal of truss supports and not reinforcing the structure plus did not leave any ventilation gaps between insulation and roofing felt. Attic area was left structurally unsafe. Wood shavings and litter left lying on top of 1st floor ceiling around electrics and then covered by insulation and attic flooring creating fire hazard. Rectification costs are for engineer cost £995, labour to remove plasterboard, flooring, insulation and install temporary roof supports £325, plus additional work to make the attic area safe and compliant with building regulations following the negligent removal of structural supports by Ahmed Abdullah £10991.76	£3,100	£12,312	As per description
11	F11	Pencil marks not removed from door lock fittings before varnishing. Having to be sanded down and revarnished. Downstairs toilet door installed incorrectly and hinge-bound. Ensuite door cut too short by Ahmed Abdullah and section of MDF and edging strip stuck on at the bottom. Damages for cost of ensuite door	£1,008	£270	Replacement door £170.10 plus labour
12	F12	Surfaces damaged by Ahmed Abdullah including sinks, baths, toilet and fireplace repairs - quoted at £420, difference of £270 from the £150 already adjusted for		£270	
13		Bookcase shelf supports - lost by Ahmed Abdullah			Replaced at a cost of £35 but can't find the receipt now
14		Window blinds brackets - lost by Ahmed Abdullah meaning blinds cannot be reinstalled. Have had to live without window blinds in office, dining room and all 4 bedrooms for over a year while trying to save to buy replacement window blinds		£500	Cost to replace 6 made to measure John Lewis window blinds well in excess of £500
15	F13	Main bathroom window blind (damaged)		£100	
16	F14	Building Control visit		£540	
17		Oak cladding cut too short - had to replace 1 pack			Replaced at a cost of £41 but can't find the receipt now
18	F15	Skirting downstairs - all has to be removed and replaced	£500	£404	£144.41 materials and £260 labour (£5/m skirting installation)
19	F16	Downstairs architrave/door frame rectification - all damaged by Ahmed Abdullah during the renovation work. Labour & materials		£414	£114.31 materials and £300 labour to remove and replace architrave
20	F17	Skip for remedial work		£235	
21	F18	Unreceipted skips - receipts only provided for £620 from skip provider	£1,490	£870	Refund
22	F19	Lock receiver for toilet door that was not changed - new one had to be purchased (Screwfix)		£7.69	Materials only, not requesting labour
		Totals		£32,294	

Folder 1 contains details of:

- Text messages with the trader after initial contact;
- Emails with the Second Respondent;
- Images of the trader's website;
- Information the Consumer has obtained from Companies House;
- A list of payments and receipts; and
- Copies of the Consumers bank statements.

The Consumer also provides a detailed statement of his dealings with the trader. In that statement, the Consumer sets out his case in support of his submission that the contract was with the Second Respondent and not the, First Respondent company. It is claimed the Second Respondent *walked off* the job on 27th October 2018 leaving outstanding issues with the work.

Folder 20 contains all the documentary evidence in the form of receipts and estimates (duplicated from earlier Folders).

The trader's Response to the Claim

The trader's Response is contained in the emails referred to above dated 31st January 2020 and the three emails on 10th February 2020.

Email dated 31st January 2020

The trader's evidence;-

- A document dated 27th October 2019 consisting of a record of payments and a record of variations to the original contract price.
- A3 Completion Sheet which appears to be a list of works against a schedule of dates. The schedule appears absent of any dates apart from work to the stairs and the garage.
- A document headed 'contractor id' containing the trader's submissions that the contract with the Consumer was with Wish Global Construction Limited.
- A document headed 'Money- End Point'. This sets out which party is responsible for what item.
- A copy Certificate of Public Liability Insurance (already referred to above).
- A document headed *Richard & WG Claim*. The trader provides a detailed response in respect of the items of defect.
- There are also two spreadsheets. The first change of order. This appears to be variations from the original works and the costs arising from the same. The second spreadsheet containing a list of works, materials being supplied and the cost.

Email dated 10th February 2020 (2)

The trader provided further evidence, particularly in response to my own query about the *End Point* document referred to above. The attachment repeated the content of the email. Later that same day the trader provided a copy bank statement and a document headed 'Fairhaven Account' which listed payments from the Consumer.

The Consumer's Reply to the Response

The Consumer provided a detailed (7 page) Reply to the Response together with a Reply to the change of orders documents (or variations) provided by the trader in their initial response.

The Consumer Rights Act 2015

I believe I should set out the provisions of the Consumer Rights Act 2015 relevant to this claim.

Section 49- Service to be performed with reasonable care and skill

Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

Section 54- Consumer's rights to enforce terms about services

(3) If the service does not conform to the contract, the Consumer's rights (and the provisions about them and when they are available) are—

(a) the right to require repeat performance (see section 55);

(b) the right to a price reduction (see section 56).

(4) If the trader is in breach of a term that section 50 requires to be treated as included in the contract but that does not relate to the service, the Consumer has the right to a price reduction (see section 56 for provisions about that right and when it is available).

(5) If the trader is in breach of what the contract requires under section 52 (performance within a reasonable time), the Consumer has the right to a price reduction (see section 56 for provisions about that right and when it is available).

(6) This section and sections 55 and 56 do not prevent the Consumer seeking other remedies for a breach of a term to which any of subsections (3) to (5) applies, instead of or in addition to a remedy referred to there (but not so as to recover twice for the same loss).

(7) Those other remedies include any of the following that is open to the Consumer in the circumstances—

(a) claiming damages;

(b) seeking to recover money paid where the consideration for payment of the money has failed;

(c) seeking specific performance;

(d) seeking an order for specific implement;

(e) relying on the breach against a claim by the trader under the contract;

(f) exercising a right to treat the contract as at an end.

The Contractual Terms Agreed Between the Parties.

I have not been referred to any terms and conditions relied upon by the trader.

The Consumer, as part of his initial online complaint, stated that the works were meant to take 7-11 weeks. In the document *full details of contract with the trader*, the Consumer states;-

XXXXXXXXXX advised that the project was to last a maximum of 10 weeks, although he would be looking to finish in 7 weeks if possible. The agreement on payment was that 20% would be paid as a deposit and further 20% payments would be made every 2 weeks, but the final 20% payment would not be payable until the project was fully finished and all certificates etc provided.

And

they "(XXXXXXXXXX) walked off the job on 27th October 2018 (Week 15 of work) saying that he and his team will not be finishing the job".

I have considered what the parties agreed from the email communication between them before the commencement of works. The email communications started on 5th January 2018 which I note is a full 7 months before start of the works on 9th July 2018.

In the email dated 20th February 2018, the trader states;-

Hello Richard

In relation to the timescale, we are estimating the project will be taking between 5-7 weeks. An accurate project time management will be issued upon agreeing of the cost and we will try our very best fit within 6 weeks time.

And then by email dated 9th June 2018;-

we can also confirm with all extra works added that we are confident to handle the project within maximum 10 weeks and weekly scope of work will be given upon price agreement.

I find on the evidence that there was a term of the contract that the works be completed within a specified period of time. I find that the trader contracted to complete the works within 10 weeks of the commencement date on 9th July 2018 and that by not completing the works within this period the trader is in breach of this term of the contract.

I would have allowed any claim for compensation by the Consumer for this breach of contract. This is where the Consumer might have engaged alternative contractors following from the failure by the trader to complete the works in the agreed timeframe. The claim presented by the Consumer is, however, on the basis that the trader failed to use reasonable skill and care. I return to this below.

I also note that the Consumer claims in his Reply that it was agreed "*..that only receipted for skips would be paid for by me.*" I have not seen any evidence of this agreement nor have I been provided with any particulars about this either. I do not find it was a term of the contract that the trader be paid only for *receipted skips*.

The identity of the trader

I find that the identity of the contracting party with the Consumer to be Wish Global Construction Ltd, the First Respondent.

I have reached this conclusion based on the evidence that the Consumer wanted to be satisfied, before commencement of the works, that the trader had in place an adequate public liability insurance policy.

The Consumer requested a copy some time before 20th June 2018 and the Consumer reminded the trader of this requirement by reference to his comments: "*As discussed, some points to close out: •Liability insurance not attached*". This was supplied by email dated 21st June 2018 with the trader stating: *please find (attached) public liability insurance and design in measurement/ number instead of scale.*

The significance of the public liability insurance certificate is that the insured is shown as Wish Global Construction Ltd. The Consumer did not query or object to the policy certificate of Wish Global Construction Ltd. which he might have done had the contract been agreed with the Second and/or Third Respondent personally. It follows that the Consumer will have known the identity of the contracting party before commencement of works as the First Respondent.

I believe I should go further and discuss the significance of evidence supplied by the Consumer. This includes evidence that the First Respondent is shown as a dormant company at Companies House (which includes the period in which the work was carried out). That the copy Bank Statement produced by the trader which the consumer says looks suspicious and the fact that the trader does not appear to have complied with his obligations under The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015.

In legal terms, what I am being asked to do by the Consumer is to *pierce the corporate veil* and fix liability on the Second and/or Third Respondent. The circumstances in which a court can *pierce the corporate veil* is set out in the legal authority: *Adams v Cape Industries plc* which is a 1990 Court of Appeal case. The power of the court to do this was again discussed in 2013 in a Supreme Court decision, *Prest v Petrodel Resources Ltd*. Lord Sumption said there was only a limited power to pierce the corporate veil, namely when people were under an existing legal obligation which is deliberately evaded. *Fraud cuts through everything*.

I am unable to make any finding of fraud especially on an ADR procedure which is based on the written submissions of the parties. I am not able to carry out any kind of investigation as to whether the Bank Statement relied upon by the trader is anything but genuine.

It seems to me that before the contract, the Consumer was understandably focussed on the work he required. It also seems to me that before the contract, the trader did not deliberately intend to commit any kind of fraud against the Consumer either. What happened afterwards, was in my view, not foreseen by either party. If I was to form an overall view, it would be that this case is about mismanagement and incompetence rather than anything sinister.

I specifically leave open, however, any findings about this in the event that the Consumer decides, at a later date, that he wants to make an application to the Court to *pierce the corporate veil* in relation to any unsatisfied liability arising from this decision. What this means is that the Consumer will have to take legal action through the Courts to make the Second and/or Third Respondent pay any award of financial compensation made against Wish Global Construction Ltd.

I remind myself that ADR is intended to bring about a final resolution between the parties in a quick and efficient way. It is therefore regrettable that I have left open the question whether or not it is appropriate in this case for the *corporate veil* to be lifted. I do not consider myself able to decide questions of fraud.

The 'End Point' document and the meeting on 27th October 2019.

I am satisfied that this was not a compromise agreement negotiated between the parties to resolve disputes between them. If I had made a finding that this was a compromise agreement, then the claim by the Consumer would have been dismissed on the basis that the items of claim had already been decided. In legal terms this is called *estoppel by agreement or record*. I am specifically excluding this took place.

The reason for reaching this conclusion is because there is no prior discussion between the parties on the items of dispute which led to this meeting. There is no signed agreement or evidence of the agreement by the Consumer. Even if the Consumer had acted upon the *End Point* document, I would not have been able to take such conduct and distinguish such conduct from the Consumer merely exercising the remedies available to him under Section 54 of the Consumer Rights Act 2015 which I have referred to above.

I accept the Consumer's version of events. The trader decided, for one reason or another, that they would not continue to carry out any works and as a consequence prepared the *End Point* document for the purpose of what might be called an act of *drawing a line underneath this work* as if to bring an end to the trader's obligations.

The quantification of loss suffered by the Consumer

I have not been supplied by an expert report by either party on the alleged defective work carried out by the trader (or a full report in relation to works carried out by the trader in the attic-see below). I have not carried out my own physical inspection of the works.

In quantifying the loss suffered by the Consumer, this must be loss incurred by the Consumer by reason of the trader failing to comply with section 49 of the Consumer Rights Act 2015 (see above). This means that the trader must be in breach of section 49 of Consumer Rights Act 2015 and the loss claimed by the Consumer must arise as a direct consequence of that breach. In legal terms, this connection between the act or default and the damage arising from it, is often referred to as 'causation'.

In carrying out the task of quantifying the Consumer's loss, all I have is what the parties have told me themselves. What this means is that I must regard the evidence of both parties the same unless I am satisfied that the Consumer has proved his case on the balance of probability or the trader's case is based on the *End Point* document which I must disregard for the reasons stated above.

Item 1 (refund) - The Consumer states that he has been charged for structural assessment by an engineer but no qualified engineer assessed or reported on the stud wall. He asks for a refund of £700.00. This sum is shown as a provisional sum allowed by the trader for this item in his costings. The trader's response does not answer the point and therefore on a balance of probability, I find that the Consumer's case is proved.

Allow £700.00

Item 2 & 3 (Decorations) – The trader in his Response states;-

All other work other than building control report is agreed and compensations given to Richard as deduction from the remaining balance as we completed quality check was being checked by Richard on daily or weekly bases also the final quality check walk around completed in October. Compensation given and agreed for any damages or unsatisfied work to the client as shown in the attachment.

Decoration, unsatisfied work we and Richard XXXXX agreed the offer of 10% discount.

Furthermore, The Consumer Richard XXXXX has not raised any concern about plastering quality.

If the quality had been approved by the Consumer, I do not understand why the trader would subsequently provide a 10% discount for alleged '*unsatisfied work*'. I have already made a finding that the meeting on October referred to by the trader in his Response is not an agreement binding on the Consumer.

Allow £6,050.00

Item 4 (En Suite) – The trader states;-

Ensuite agreed to be stripped out and to be deducted from the work. Richard was to appoint an another bathroom installer to redo the ensuite redesign and complete the plumbing at his own responsibility and cost. Compensation/ discount given as deduction from the work at approx of 50%.

The trader's response, in particular, the alleged *Compensation/ discount given as deduction from the work at approx of 50%* is of no effect for the reason stated above.

In relation to the loss claimed in the sum of £1,070.00, the claim is supported by three (paid) invoices, Plasterboard £36.64, Showerhead £96.90 and Plain Coving £74.80. Missing are invoices/receipts for the balance claimed by the Consumer. I find the Consumer has not proved his loss in relation to the other items of loss not supported by evidence.

Allow £208.34

Item 5 (Electrics) – I believe the Consumer can expect as a minimum standard that any electrical work carried out to his property is safe and in compliance with all legal requirements.

I find of concern the trader's non response to the Consumer's allegation that *illegal, uncertified sub-contractor who breached a minimum of 4 electrical regulations leaving the property electrically unsafe*. If this was not correct, I would have expected an unequivocal denied. The trader's response: *'Negotiable'* is not satisfactory and this decision is not the place for entering into it either.

The Consumer seeks £4968.00 being a *"Refund for illegal, uncertified subcontractor plus costs for short term safety"*. Making safe any work carried out by the trader would be a recoverable loss as well as the cost of any report checking the alleged uncertified works. Looking at the Consumer's evidence, I can find an invoice for testing in the sum of £396.00, a Tool Station invoice for £80.82 and a receipt for smoke alarms dated 11th April 2019 in the sum of £550.00.

I cannot see in the evidence that the trader has contracted to supply the smoke alarms and/or any have been fitted by him which has been done incorrectly. I have not allowed compensation for the smoke alarms. The Consumer is not entitled to a refund-only costs of making safe any work carried out by the trader improperly.

I note the Consumer comments that the person engaged by the trader to carry out these works was subsequently convicted of an offence of Rape but these matters are wholly irrelevant to whether or not the work was carried out using reasonable skill and care.

Allow £476.82

Item 6 (Plumbing) – The trader in his Response states:

All work was inspected by the building control and our plumber came back to rectify. In our meeting in January 2019 Richard confirmed that he is dealing with our sub-contractor directly and they agreed to come back and resolve the remaining. However, later Richard has reported to us he couldn't get hold of the subcontractor we then insured him not to worry if sub-contract fail to attend we will instruct a plumber at our cost but first we need to hold a meeting discussing and making a work plan and payment plan. Again, Richard refused and stated this is one sided agenda as evidenced in the email.

I have understood the trader's response is that the sub-contractor was dealing with items of defect but then the sub-contractor let down the Consumer. In legal terms, the trader is vicariously liable for the act/default of the sub-contractor. It therefore follows that the trader is liable to the Consumer for the alleged defective work carried out by the sub-contractor and the trader cannot charge additional sums as he seems to be suggesting he would do.

The Consumer claims £1,040.00 in the schedule of loss set out above, however, in the folder I can only find an invoice totalling £720.00. I cannot find explanation for the balance and I am therefore only able to allow the amount of loss evidenced by the Consumer.

Allow £720.00

Item 7 (Wooden Flooring)- The video evidence supplied by the Consumer does not clearly evidence defects which involve replacement of the whole flooring. Any alleged damage is not accepted by the trader. The original cost being £1,125.00. The independent flooring assessment report referred to by the Consumer in his Reply has not been disclosed to me.

The Consumer in his Reply to the Response refers to an “..*independent flooring specialists assessment of the flooring will be evidence enough and this is already available*”. I have seen a request for quote for an assessment of the flooring dated 4th March 2019 and two estimates. As stated, the *independent flooring specialists assessment* although obtained by the Consumer, has not been disclosed to me. If it has been disclosed, it is not what might be regarded as an expert opinion to which I should have regard in my decision. The absence of a report, apparently in existence, is detrimental to the Consumer’s case.

I am unable to find on the balance of probability that the Consumer has suffered loss to the sum of £1,758.00.

Allow £0

Item 8 (Tiling) - The trader in his Response states he requires an inspection. This was offered to the trader (see above). Again, this is not the place to put such a request. I must accept the video evidence supplied by the Consumer as correct. The sum claimed £185.98 is only supported by evidence in the sum of £123.98.

Allow £123.98

Item 9 (Downstairs Toilet) - The Consumer has allegedly paid £1600.00 following from the work carried out by the trader but is now only asking for £600.00 compensation. The cost of rectification suggests more work has been carried out by the Consumer than the Consumer had originally bargained with the trader. It appears that the link between loss and damage (or ‘causation’) has been broken.

Allow £0

Item 10 (Attic Space) - The Consumer claims £12,312.00 for this item. I have a copy receipt for a structural survey by IPS Consulting dated 17th June 2019 but no accompanying full report. All I have been supplied is sections from the report; *Recommendations and Principal Inspection and Assessment Report*. I also have a copy email dated 7th January 2019 evidencing the Consumer also made inquiries about a structural report with RWA Consulting.

I believe it is important that I say something about the knowledge and understanding of the Consumer in relation to this aspect of the claim. My finding is that is that he is a knowledgeable individual and has a good understanding about proper processes and procedures. As mentioned above, the Consumer did consider it prudent to check the trader’s public liability insurance before engaging the trader. I further note, the Consumer also relied on his father trade account with a supplier of materials when purchasing some of the materials for this work. He obviously has access to professional advice, if he needs it above his own acumen.

I believe a full copy the report relied upon by the Consumer should have been disclosed as part of his case especially since he appears to have paid quite a lot of money for it - £995.00. The Consumer has not sought to claim back the cost of the report from the trader although he has sought to do so for the cost of a skip in respect of the remedial works (see below) which I find odd.

I find that the trader did contract to carry out works in the attic from the document referred to in his Response namely, scope of work document which states '*Attic space (P/S) - Lighting and socket + loft ladder included*'. I note the trader's Response which is that '*no design fee is charged also this is client*'. I do not believe this is enough to absolve the trader either.

I find both the trader and Consumer at fault. Planning Regulations must have been in the mind of the Consumer not least to make sure that the work he did have carried out was within Permitted Development Rights and did not contravene planning regulations. I would have expected the Consumer to obtain a structural survey before commencement of works. Getting one afterwards, sounds very much like, to coin a phrase, '*closing the stable door after the horse has bolted*'.

I would also not expect the trader to carry out any works to the attic without at least advising the Consumer of the risk of removing truss supports beforehand. I have also taken into account the parties obligations under the Construction (Design and Management) Regulations 2015 but I have been unable to apportion liability as between the parties after considering the same.

Without a full copy of the report, I am not able to find causation has been established by the Consumer. Having said that I do not believe the trader should have cut the truss supports either. I have come to the conclusion the only fair way to deal with this aspect of the claim is to order the trader to refund the Consumer the amount charged by him for this work in the attic.

Allow; £3,900.00.

Item 11 & 12. I do not accept the trader's comments that compensation has already been agreed for these items for the reasons set out above.

In terms of evidence of loss, I have an invoice for a door in the sum of £170.10 and an estimate dated 19th December 2018 for £350.00 plus VAT. The Consumer has not produced a receipt or paid invoice for this when rectification work has already been undertaken.

Allow; £170.10

Item 13 -N/A

Item 14 (Window Blinds)- I do not see how the trader should be held responsible in law for storage of blinds, whilst work is carried out to the Consumer's property. I would have expected this function to be performed by the Consumer unless the trader had assumed responsibility for their care which I do not find here. The Consumer has not shown the loss is as a consequence of the act or default of the trader or put another way *causation* has not been proven.

Allow £0.00

Item 15 – I do not accept the trader's comments that compensation has already been agreed for these items for the reasons set out above. Having said that the claim for £100.00 is not supported by evidence.

Allow £0.00

Item 16 (Building Control Visit) – Sum claimed £540.00. This would have been payable by the Consumer in any event (especially since there is no allegation that the trader has charged the cost to the Consumer already).

Allow £0.00

Item 17- N/A

Item 18 (Skirting) - The trader says he has not been paid for this item. The Consumer says *"The skirting has to be removed and replaced in order for the incorrectly fitted wooden flooring to be fixed."* Putting aside what the trader says, I have not allowed any compensation for removal of the flooring. It follows that I cannot allow any loss for this item on the same basis.

Allow £0.00

Item 19 – The trader states *"Downstairs architraves are existing and no damages to be recalled as work and decoration were check and agreed with Richard and all decoration work were checked by Richard"*. The Consumer states in reply *XXXXXXXXXX is correct in stating that the architrave is the original architrave, but he has clearly not looked at the evidentiary pictures and video provided in the original ADR claim. The damage caused by XXXXXXXXXXXX's team is where they have butchered the bottom of the door frames by cutting into them, leaving them at uneven heights and attempted to fill in the gaps with poorly applied decorators caulk. The architraves no longer reach the ground therefore need to be replace.*

The thrust of the Consumers video evidence is that the paint has not been properly finished by the trader. I do not find on the balance of probability the trader is responsible for the damage claimed.

Allow £0.00

Item 20 (Skip for Remedial Work)- I have both allowed and disallowed items of remedial work. Looking at the remedial work I have allowed, however, I cannot see that a Skip is required in relation to any remedial work outstanding (except for the work attic which I have disallowed but ordered the trader refund the cost works to the Consumer).

Allow £0.00

Item 21 (Unreceipted Skips) – The trader states *We have total skips of 5 and receipts were supplied to Richard counted and he witnessed 5 skips supplied. Furthermore 1 skip remained unpaid in the change of orders attachment in addition 1 skip from the originally work still unpaid in total 2 skips not paid.* The Consumer states in his Reply *The agreement was that only receipted for skips would be paid for by me.*

I did not find any other agreement save the time frame in which the works where to be completed (see above).

Allow £0.00

Item 22 – The trader states; *We don't recall this. However the door and door ironmongeries were the client supplied and if has not changed then it was not supplied by the client.* I have *Replace all internal doors with modern doors* has included in the scope of the work. If the doors have not been replaced correctly it does not matter who supplied the ironmongeries.

Allow £7.69

Summary, the total of the items allowed amounts to £12,356.93.

For the avoidance of doubt, I find there is no money owed by the Consumer to the trader. Even if there had been, any liability would have been extinguished by the trader failing to carry out the works within the agreed timescale or when the trader decided to terminate the contract, when he did. This means that the trader has no valid counterclaim against the Consumer or a right of 'set off' in law or in equity.

ORDER

IT IS HEREBY ORDERED that the First Respondent pay the Consumer the sum of £12,356.93 within 28 days of the date hereof.

Date 15th April 2020



Signed

Mr Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited



London Arbitration Centre Limited ;Correspondence address and registered office; LAC Postal Communications, 62 Tunstall Drive Accrington Lancashire BB5 5DG United Kingdom (Company registration no. 08945377)