

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; 21st October 2019

Between

Leila XXXXXXXXX and AlexXXXXXXXXXX

Consumers'

And

Burlington Renovations Limited

Trader

Decision

Introduction

The case concerns a dispute over building works carried out by the trader at the consumers home at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The complaint is extensive. The consumers state that *“the scope of the works was 1) Loft conversion, 2) roof terrace off the loft conversion, 3) kitchen renovation, 4) roof terrace off the kitchen”*. The consumers state *“It is now 14 months later (at the date of the claim form dated 23rd June 2019) and the work is approximately 60% complete. We have work not even started, work incomplete and work defective and needing repair. Mr XXXXXXXXX has, however, taken 90% of the payments for this work already despite not having completed the equivalent amount of work”*.

Mr XXXXXXXXX is the Director of the Company against whom the claim is made. Information from Companies House tells me that the trader is a small company, incorporated in 2016. There are two directors of the company sharing the same name, Stephen XXXXXXXXX. The second, Stephen Hallows XXXXXXXXX, I assume to be a close relative of the first. It also appears that the latter is the one with the controlling shareholding.

I believe that I should briefly mention something about the traders background because during the course of this arbitration (ADR), it appears Mr XXXXXXXXX's father passed away (I believe on 21st

August 2019) and his wife suffered a serious medical condition involving a burst aneurysm in the brain. (I believe on 16th July 2019). At this point, it is not clear whether Mr XXXXXXXXX's father is the other director shown at Companies House. It is too soon for Companies House records to be up dated. I believe I have to mention this because timetabling in this ADR has been extended to take into account these events and also I have to direct myself to take into account these factors when considering the response which has been made by the trader to the consumers claim.

The claim form

I have taken from the claim form comments touching upon the alleged conduct of the trader;-

Mr XXXXXXXXX stopped sending workers to site on the 22nd February 2019 despite never being refused access. Mr XXXXXXXXX has not requested access even once since that date. We have made it clear on correspondence the keys are available upon request.....

After Mr XXXXXXXXX advised us to get the work done with someone else on the 3rd March we proceeded to issue him with a formal notice of the outstanding work/money he now owed us in order for this job to be finished and a confirmation that by quitting and breaching our consumer rights so badly over the last year he had breached his contract.....

We gave him the opportunity to do the work and a deadline of 3 weeks to complete all outstanding work. This was set to the 1st April.....

Mr XXXXXXXXX has maintained that he is unable to complete the work due to the lack of a party wall agreement with our neighbours. This is ongoing and due to be in place in the next couple of weeks. His excuse is not valid for any of the other, very serious and extensive work from the list and only valid for the terrace work.....

Since these formal notices it has been 3 whole months and Mr XXXXXXXXX has made absolutely no attempt to continue essential work, most of which is part of the Building Regulator's contravention letter, such as the Juliet and roof leaks, the skylight, the water ponding, the electrics in the kitchen, the incorrect boiler, extensive decorative work for the loft (we still have a hole in our floor in the hallway).....

Mr XXXXXXXXX has also allowed illegal gas work to take place, has made use of trade association logos illegally, has breached health and safety standards in several areas and has even presented invoices with an invalid VAT Tax code. He was also legally obliged to log and report a near miss incident for health and safety involving a brick falling through the ceiling and onto our baby's bed - and this never happened.....

We have lost complete faith in his ability to honour his contract with us.....,

Like I say, these matters don't immediately touch upon the alleged defective work but provide an understanding of the sense of frustration felt by the consumers.

The claim

In response to the question how much the consumers are claiming from the trader, the consumers state that they are claiming £58,665.74 which they say is 'based on quotes received for visible work required'. I understand the reference to 'visible work' as work which has been identified as being defective.

The claim has been supported by evidence which has been submitted electronically to the London Arbitration Centre (LAC) and to the trader (by additional service through a memory stick which the trader confirmed receipt on 1st August 2019). The evidence has been supplied by the consumers separated into distinct parts;-

- *Juliet Doors*
- *Roof weather proofing*
- *Kitchen*
- *Skylight*
- *Neighbour's damage*
- *Fire Doors*
- *General Leaks*
- *Building Control notices*
- *Lack of Care and Skill*
- *Unreasonable time taken*

The consumers' evidence

The Juliet doors.

The consumers conveniently set out their claim in relation to this aspect of the damage as follows;-

'Overview

- *The leaks from the doors were reported to Mr XXXXXXXXX at least as early as September 2018.*
- *He then took an unreasonable amount of time to perform any actions at all. In fact at one point he told his workforce to block the drainage slit with sealant thereby making the situation even worse.*
- *Despite evidence from the manufacturers, Quickslide, and independent experts making it clear the installation was incorrect he continued to ignore this and in the meantime every time it rained our property was damaged further - each leak has seeped through to the bedroom below damaging our ceiling and causing dangerous mould.*
- *In fact he told us several times that the manufacturers told him the installation on the sill was correct - we know this is not the truth based on the fact we have actual email evidence from them to the contrary. We also sent him an installation guide further highlighting how wrong he was.*
- *He eventually had the door refitted in late February 2019 and still managed to do this incorrectly as the leaks continue as noted by pictures and email from March 2019, an incredible 6 months after the issue was flagged. It is not reasonable to expect something to take 6 months to repair and still not be resolved*
- *After sending the email from the 3rd March Mr XXXXXXXXX told us over SMS "You should find someone else to finish the works".*

- Quickslide also visited site and discovered that the doors had been further damaged by planing a section off in the middle, presumably to allow them to close, rather than adjusting the hinges as you are supposed to. A clear lack of any reasonable care or skill being used.

- In the latest downpour we also noticed water leaking in from the top right corner of the door through the plaster work - this indicates a much more serious issue with the overall weather proofing of the roof Mr XXXXXXXXX installed (we have a separate folder for this).'

There are 10 photographs showing water leaking around the fitted doors. There is evidence of water penetrating the doors around the frame. Some of the water appears to have gone through the floor and stained the roof of the room below.

There is a letter from Jason Reid of Quickslide dated 26th June 2019, stating that, in summary, the doors had not been fitted properly (without repeating in full what he says). He also points out that a section of the doors showed evidence of being *'planed off seemingly to allow them to close and not catch the lock. The doors were damaged this way.'*

I see that the letter follows on from an earlier email exchange in 9th January 2019 between the consumer and Quickslide, who stated (after looking at photograph emailed to them);-

You should not use silicone on the underneath of the door as this may affect the drainage of the doors.

The doors should sit on the cill as per the attached picture.

I have not seen the SMS message dated 3rd March 2019 although there are four other emails provided by the consumer under this particular section of the claim. I have an email from the consumers to the trader on that date informing the trader;-

Despite Steve re-fitting the door it is still leaking.

I have an email exchange (last dated 7th January 2019) on the issue of the doors. I also have an email exchange (last dated 4th February 2019) on other issues, including the doors. So in summary, it appears that the Juliet doors were fitted by the trader and then refitted by the trader in February 2019 but in spite of the repair, the claim is that the doors are still leaking in water.

Roof weather proofing

The 'overview' stated by the consumers is as follows;-

- The quality of the new roof structure is very poor and is causing serious leaks into our home.

- The photos show a lack of any lead flashing or equivalent used throughout to weather proof

- The upstand from the new flat roof for the terrace is barely 5 cm where a recommended 15CM should be used - this is the main cause of the leaks shown in the photos which are dripping onto the stairs (drips from mansard). This was apparently as the mansard roof was finished first, which is the incorrect order to do this in as it would have needed to overlap the upstand for secure weather proofing - a clear lack of care or skill.

- One photo shows a section of the mansard where the timber joist can be seen protruding and so fully exposed to the elements - water is of course entering from there also.

- After a recent downpour we can see additional water ingress from the top roof/mansard roof above the Juliet doors. In the photo you can see the plaster soaked in the top right corner. We have no idea

if this water is coming from the top roof GRP being poor or the lack of weather proofing around the mansard roof.

- We also have leaks into the loft bedroom directly below the new main flat roof. See pictures leak from main roof 1 and 2. It is difficult to see these in the photos clearly, of course a site visit can confirm all of this easily. Inadequate weather proofing main roof 1, 2 and 3 show clearly that the leadwork has been incorrectly applied.

- We are now in a position where we will have to completely re-roof this entire mansard to investigate where the issues are and resolve all the defects, at considerable additional cost.

There are approximately 25 photographs supplied under this head of claim. The photographs show evidence of water penetration from the roof as well as 'ponding' on top of the flat roof. There are other photographs apparently showing the absence of 'lead flashing' and exposed timber.

Kitchen

This head of claim has further sections;-

- **Boiler - incorrect and illegally installed**
- **Electrics - uncertified and dangerous**
- **Flooring - Damage and poor installation**
- **Radiator - not replaced**

Taking each of these headings in turn;-

Boiler - incorrect and illegally installed

The consumers state by way of *Overview*:

Incorrect:

- Prior to signing our contract with Mr XXXXXXXXX we specifically stipulated we wanted to have a say as to which boiler we would have installed. At the time Mr XXXXXXXXX confirmed in writing that we would get the "Worcester bosch cdi probably 32kw.

- In July the boiler was installed and to our shock it was a Glowworm essentials, approximately half the value of the more premium Worcester Bosch.

- When we noticed, we flagged this immediately and the incredible response from Mr XXXXXXXXX was that we shouldn't get a free upgrade. The boiler was quite a big point and helped us with our decision to sign with Mr XXXXXXXXX. This was deceitful and misleading and influenced our decision to sign the contract.

Illegal:

- In October we noticed no evidence was provided of the legal installation of this boiler and so we demanded the certificate. Despite chasing Mr XXXXXXXXX we eventually received the certificate over email in January 2019, 3 months after we asked for this, a lack of reasonable time taken again.

- We then noticed that the certificate showed as the boiler being installed in October when in fact it was done back in July (see photo). We were very suspicious of this and reported it to GASSafe.

- GASSafe then confirmed that the engineer Mr XXXXXXXXX sent to us in October was not the original installer and, against GASSafe's rules, was asked to commission an already installed boiler.

- To date there is no evidence that the original installation work was completed by a gassafe registered engineer and so was illegally conducted.

- This incident is in the process of being reported to the HSE by GASSafe

There are two photographs. One of the boiler and one showing men apparently fitting the boiler. There are six emails.

Email chain to 21st September 2019 –

Issue 67 – Boiler

We are not accepting the Glowworm Steve – it needs to be the Worcester Bosch cdn 32W as stated by you in email. – schedule didn't specify boiler, as far as can see didn't get a free upgrade.

The comments in blue is the trader's reply (and below).

Email chain to 12th October 2018 -the reply from the trader in response to queries about the gas certificate.

Hi Leila

Gas safe reg no for project is 3832036, you will get hard copy in post direct from gas safe in next couple of weeks.

Kind regards

Steve

Email chain to 22nd March 2018 –

- *When would the boiler be replaced?*
- o is this a quick job or will we ever be without heating or hot water? – takes few days, would be around week 4-6, depends on choice of new location for the boiler*
- o We'd like to agree on which boiler will be fitted too. Please could you send us the details? – would be Worcester bosch cdi probably 32kw*

Email chain to 13th June 2019 – showing details of an official complaint to someone at gas safer register.

Email chain to 21st May 2019. There is attached a report from Kevin Carrroll, an Inspector with Gas Safe Register. I am paraphrasing here. The report makes reference to *gas supply, not to current standards and boiler defect was classified as ; 'NOT Compliant with Building Regulation' and 'AT Risk'*

Email 15th September 2018 again various complaints including reference to the boiler.

Kitchen electrics

The consumers provide an Overview:

- During an inspection from builders to get quotes for all the outstanding work we were alerted to an electrical wire that is wrapped around a water pipe. This is in the cavity of a wall Mr XXXXXXXXX's team created and the plumbing and electrics was all undertaken by his team. We have no idea if this wire is live or why it has been left in there in this state.

- We had an issue with our cooker hood light flickering and when the manufacturer's engineer came to site he was astonished by the standard of the electrical wiring in the hood and immediately alerted us to the fact that no isolaters had been fitted.

- we reported this to Mr XXXXXXXXXX and his response was to lie to us about sending an electrician (no one turned up) and to claim the main fuse box is all the safety we need and isolaters are for convenience only.

- More recently i had a look under our kitchen cabinets and noticed yet more terrible work and potentially unsafe wiring jus tloose under the cabinet. We are too afraid to go near it.

- To date we have had no electrical certificates for the work completed in the Kitchen despite demanding these and no proof it was conducted by a certified electrician.

- This will now cost us even more to review and rectify

- We have also added these concerns to our report for the HSE

There are 4 photographs including a photograph of a electric wire around a water pipe. The email chain to 1st March 2019 sets out the complaints made to the trader in this regard.

Flooring - Damage and poor installation

The consumers overview;-

Overview:

- Prior to starting the work we asked Mr XXXXXXXXXX for recommendations and it was he that alerted us to Karndean, which we had never heard of before.

- We then checked the options and specifically asked him if we needed to select a certain type of vinyl. Mr XXXXXXXXXX responded by saying we could pick any.

- The installation was then done by non Karndean qualified installers and the results were very poor. See photos. There are gaps between the tiles, some tiles have been cut and then stuck together, which looks terrible. In order to fix this now we would need to replace the entire flooring due to the damage.

- When pressed on this Mr XXXXXXXXXX proceeded to lie and tell us he never agreed to this flooring type and then would charge us to repair the damage caused by his team.

There are eight photographs and three emails. The consumer has highlighted what they wish to bring out from the emails. I have added the dates of the emails;

Emails:

Re_ Kitchen and Bathroom flooring.msg - Evidence Mr XXXXXXXXXX told us we could select any type of vinyl Dated 30th April 2018

RE_ invoice.msg - Evidence Mr XXXXXXXXXX guaranteeing the flooring for 15 years, fit and materials. Dated 17th May 2018

RE_ Update on 163A LRR.msg - Mr XXXXXXXXXX is now telling us he never agreed to this type of flooring. Dated 5th November 2018

Radiator

The consumers have provided an *Overview* as follows:

- *In the process of refurbishing our kitchen Mr XXXXXXXXX's team removed our existing radiator and never re-installed it.*
- *despite several complaints Mr XXXXXXXXX has used the excuse that the Magnet 3d mock up of the cabinet configuration did not show a radiator. This is ridiculous considering A) They are not architectural drawings, they would never have included that additional detail and B) only showed the two walls the cabinets are on, not all 4 kitchen walls.*
- *we will now have to pay extra to have a radiator fitted.*

There is a photograph of the radiator which I am told has been removed but not replaced.

Skylight

The consumers have again provided an *overview* as follows together with an explanation of the attached email under this part of the claim.

- *We expected an off the shelf skylight to be fitted and instead Mr XXXXXXXXX has tried to construct one by cutting a hole in the roof and sticking a piece of double glazing to it.*
- *Building control have flagged on several occasions and in their contravention letter that tape is not fit for purpose as weather proofing.*
- *You can see the tape already peeling off.*
- *To add to the issue the glass was not constructed with any pitch and so as you can see in the photos every time it rains water pools on the top. This eventually dries and causes staining on the glass. It is also a building regulation to have a minimum pitch of 3 degrees.*
- *We are now having to get quotes to completely replace this for an actual skylight.*

Email:

Flat status and christening.msg - The very first time we saw the skylight we instantly rejected it - this was not what we expected and paid for at £1140 exc VAT!!

The consumers rely on 15 photographs showing the skylight 'pooling' and tape coming off. The email is dated 15th July 2018.

Neighbour's roof damage

Consumer's Overview

- *During the party wall activities Mr XXXXXXXXX's team further demonstrated an alarming lack of care or skill and proceeded to cover the neighbour's roof with debris.*
- *To date Mr XXXXXXXXX has ignored our demands that this be rectified and we have had to ask for additional quotes to try and fix this damage caused by Mr XXXXXXXXX.*
- *You can see the photos were taken back in October of 2018 with absolutely no action from Mr XXXXXXXXX months later.*

Emails:

Outstanding Work_ including legal_ regulatory requirements.msg - One example where we have demanded Mr XXXXXXXXXX rectify the damage caused to the neighbour's roof.

There are three photographs to go with this aspect of the claim.

The email is dated 28th January 2019 and is attached with a photograph of plastic sheeting on the stairs and a snagging to do list.

Fire doors

The consumers *Overview:*

- Over the course of the project Mr XXXXXXXXXX has continued to demonstrate a lack of reasonable knowledge of the industry he works in and, as a result, misled us with false information. This has directly resulted in our safety being compromised.*
- He has persisted that he only needs to paint our doors with intumescent paint and yet, as detailed in the email chain attached, been consistently corrected by building control*
- The paint he has applied, for example to our bedroom door, has been done only to one side and very poorly.*
- We now have to get quotes for replacing our doors with fire doors*

Email:

RE Roof Terrace Formations Fire Doors.msg - evidence of the exchanges between building control and Mr XXXXXXXXXX, as well as Mr XXXXXXXXXX being told he is providing incorrect information to us. A lack of professionalism, care and skill by attempting to mislead his customer with incorrect information.

There are accompanying 2 photographs (showing one side of door painted) and an email chain to 3rd April 2019.

General leaks

The consumers *Overview:*

- At no point during our discussions did Mr XXXXXXXXXX discuss the option of a full cover scaffolding, something that you only see now everywhere. Instead his team used covers which were not put together with any skill or care and resulted in very bad leaks in every single room.*
- these leaks caused considerable damage to all of our rooms as can be seen in the photos.*
- In our son's bedroom it resulted in very dangerous black mould appearing.*
- In our daughter's nursery an entire section of the ceiling collapsed, thankfully we were not home at the time or it would have fallen onto her.*
- In the process of repairing this ceiling his team threw away our ceiling rose and it has to date never been replaced with Mr XXXXXXXXXX's excuse being he knows nothing about this.*
- To make matters worse, and yet another example of a lack of reasonable care and skill - our ceilings all have paper covering, rather than re-paper the sections Mr XXXXXXXXXX told his team to cut those*

sections out and plaster the area! We now have a ceiling that will not be level should we repaper it in the future.

- there are still leak marks throughout our property that are yet to be addressed, over a year later.

Emails:

RE_ invoice.msg - early reporting of leaks and issues

Re_ Leaks_cracks.msg - evidence of Mr XXXXXXXXXX continuing to mislead us by saying the leaks are not serious. The presence of mould clearly demonstrates how serious the leaks were.

This is supported by 21 photographs and the emails dated to 14th May 2018 and 15th May 2018.

It would appear these complaints relate to the period during the currency of the works as opposed to leaking stemming from completed works.

Building Control Notices

The consumers helpfully provide an overview;-

- As soon as we realised the bad situation we were in with the quality of the work being done and the length of time it was taking we contacted Building Control.

- Initially we had to contact the council to determine who was regulating the work at our property. It transpires that Mr XXXXXXXXXX had incorrectly and intentionally put his office address on the correspondence with Building Control and so we were never notified, as we should have been, that Assent had been appointed as Building Control. Another example of Mr XXXXXXXXXX concealing important information from us, the client.

- BCO had been out to visit once in May, once in June and then not been notified by Mr XXXXXXXXXX for several months. We therefore asked them to come to site to review and that is when the gravity of the situation was revealed.

- BCO issued Mr XXXXXXXXXX with his first contravention letter and a deadline - which was subsequently ignored by Mr XXXXXXXXXX and most of the outstanding issues were still not looked at by the end of the deadline - showing this ongoing issue with Mr XXXXXXXXXX's inability to perform his job within reasonable time and any professionalism. He simply did not care and showed absolutely no urgency to do anything.

- The second contravention letter was issued and Mr XXXXXXXXXX continued to take as much time as possible to react to these very serious issues.

- To date most of the issues from those contravention letters have been left unresolved, such as: Juliet doors and roof leaks, roof ponding, incorrect insulation, structural justification for terraces, fire doors, sky light construction.

Emails:

Fw 163a Lower Richmond Road Project Building Control Issues.msg - 1st contravention letter send by BCO on 25th September 2018

RE_ 163a Lower Richmond Road Project.msg - 2nd contravention letter sent 5th November

RE_ Detailed Report for evidence - Mr XXXXXXXXXX & Burlington Renovations.msg - Overview report from BCO

Within the evidence is also a letter from Assent Building Control Limited ('ABC') dated 4th June 2019. ABC have been appointed to provide the Local Authority building control function. In their letter, ABC, helpfully set out a history of their involvement. In relation to the up to date situation they state;-

"I hope that this helps to clarify the overall project status and sequence of events to the current day, we are awaiting notification once the terrace works have been undertaken and all commissioning certificates produced for our records enabling us to carry out a final inspection after which point if all is correct we would then issue our final certificate for the scheme".

The attached email chain to 31st May 2019 with ABC state;

"...The issue concerning regulatory matters is for us to determine and is one that we are following at present to ensure the project will achieve sign off once works are fully completed, as the final details required [Terrace design] has now been resolved leaving only the installation and final inspection with certification to follow; means that while the process has been extremely slow, with issues picked up along the way that have since been resolved we are getting closer to formal sign off and final certification for the project under Building Regulation standards..."

The other two emails are dated to 5th November 2018 and 25th September 2018 appear to be communication between ABC and the trader.

Overall, the evidence is indirectly relevant to the items complained about although the fact that there appears no final certificate, on the consumers evidence herein, is of some importance.

Lack of skill and care

Under this heading we have further breakdown of the items of complaint ;-

- **General Decorative Finish**
- **HMRC - invalid Tax information**
- **HSE - breaches and illegal**
- **insulation - incorrect width**
- **Poor Terrace Structural Design**
- **Trade Logos - illegal use**

General Decorative Finish

There are 19 photographs of various items of alleged defect and emails dated 12th June 2018, 12th September 2018 (chain), 15th September 2018 (with a snagging list), 6th February 2019 and 5th February 2019.

HMRC - invalid Tax information

The consumers have provided an *overview*;-

- 5 invoices sent to us by Mr XXXXXXXXXX contain invalid TAX codes. this was verified by HMRC.

- This demonstrates a lack of professionalism and a lack of care issuing a customer with false tax details in an invoice.

- I reported this to the HMRC as i could not understand why Mr XXXXXXXXXX would use an invalid VAT TAX code on official invoicing.

I believe the consumer is referring to VAT numbers shown on invoices from the trader. There is also an invoice from the consumer to HMRC.

Again, not immediately relevant to the alleged defective work but nonetheless is important background information.

HSE-breaches & illegal

The consumers provide an *overview*

- As a result of the illegal GAS work completed by Mr XXXXXXXXX's team i collated various other work that breached health and safety and sent this report to the GAS Safe escalation team. I am awaiting confirmation once this report has been submitted to the HSE.

- In the attached PDF you will find an overview of the issues noted along with picture evidence.

- the breeze block falling through and onto our baby's bed - this was a serious incident and should have been recorded by Mr XXXXXXXXX in a health and safety log, this was not done and was in fact completely ignored by Mr XXXXXXXXX. We barely got an apology for this.

- The quality of the team Mr XXXXXXXXX had working in our home can be seen by the evidence. One shocking example was when one of his team got very drunk one evening and broke into our loft and tried to sleep up there. We called the police and they came out and dragged him out. Again, we didnt even get an apology from Mr XXXXXXXXX.

There is a letter to 'Rowan' with accompanying photographs. It is not clear who Rowan is. There are also 3 emails with the trader dated 3rd October 2018, 19th December 2018, 28th January 2019.

Again, the head of complaint in itself is not immediately relevant to the alleged defective work but nonetheless is important background information.

Insulation

The consumers' Overview:

- Mr XXXXXXXXX's team used an incorrect width of insulation, 100MM instead of the regulation required 120MM. Mr XXXXXXXXX provided a ridiculous excuse that he can create an "envelope" by just making the sides thicker - regulations require a certain thickness everywhere, not just the sides - otherwise the regulations would specify it can be done this way.

There are two email chains in support of the above dated 17th September 2018 and 7th November 2018. The consumers summarise the evidence in the emails as follows;-

RE_ 163A - Next Steps.msg - Evidence 100MM used instead of 120MM - with ridiculous explanation form Mr XXXXXXXXX

Re 163a Lower Richmond Road Project.msg - Evidence Mr XXXXXXXXX was asked for concrete evidence of the inslation used, not just a verbal confirmation from the builder. This was never provided.

The evidence under this heading is direct evidence of defective work.

Poor Terrance Structural Design

The consumers provide the *Overview*:

- Due to the poor quality of the designs produced by Mr XXXXXXXXX's structural engineer we have reported him to ICE with the description found in the separate "Complaint to ICE.txt" report

- as a result we had to recruit and pay for a structural engineer to come to site and produce decent designs - which were approved by BCO.

- In addition this job was scheduled in our contract to take 12 weeks. An incredible 5 months after he started Mr XXXXXXXXX only then decided to check the structure below the proposed lower terrace only to discover a cavity where he assumed there were bricks. He even threatened the lower terrace would not be possible - the only reason we included the complete refurbishment of our kitchen was for the terrace. He displayed a serious lack of care or skill by accepting the job, taking our money and then leaving it so late to verify he could do the job.

There are three emails which the consumers state is evidence of the following:

RE_ Terms & Conditions.msg - evidence we made it clear the designs were not fit for purpose

RE_ 163A - Next Steps.msg - proof of Mr XXXXXXXXX not checking the terrace area until 5 months after project started.

Re_ Scaffolding.msg - Further proof that Mr XXXXXXXXX did no due diligence in advance of the accepting the contract.

There are also in this folder plans and two photographs and a copy complaint about the trader's structural engineer, Jude Swampillai, to the Institution of Civil Engineers (ICE).

Trade Logo

The consumers in their overview state;-

- When asked for his Ts and Cs it took him several days to produce them. These terms also illegally display the trade logos of three trade federations - Burlington Renovations is not a member of any of them.

- On closer inspection the terms appear to have been plagiarised from another company - the properties of the PDF show the author as being a Tom Clowes with a contact number of 0207 610 8351 - both connected to a Urang Group.

- The file was also created the same day it was sent to us - there should have been no need for Mr XXXXXXXXX to make any amendments to a terms and conditions that presumably should be available from the moment he incorporated his company.

And then Emails from trader organisations as showing as the consumers have put it :

Re_ Illegal use of your logo (1).msg - response from ARMA

RE_ Illegal use of your logo.msg - response from FairTrades

There is also an email requesting the traders T & C's together with a copy of the T & C themselves.

Unreasonable time taken

Under this head the consumers state;-

Overview:

- from the outset and within our contract Mr XXXXXXXXXX stipulated timelines - timelines for the work to be done and, of course, for him to get paid. He has been paid 90% of the total and we have 40% of the work left to do.

- His schedule set out a 12 week completion and the gant chart he produced had a completion date of end of June 2018 with a target from him in the email of an "earlier finish, of mid-june" - attached as "Mr & MrsXXXXXXXXX, 163 Lower Richmond Road, Putney.docx.pdf"

- The emails provided are again only a very small selection showing how often we demanded timelines and deadlines and how often Mr XXXXXXXXXX either ignored these demands outright or lied to us with dates of completion.

- The issue we had with Mr XXXXXXXXXX's inability to manage this project according to reasonable timing has also been supported by BCO on several correspondence.

- He even visited site once and snuck in through the rear entrance to avoid being noticed by us. The builder informed me that Mr XXXXXXXXXX had asked him not to tell us he was coming so as to avoid us. Disgraceful behaviour by someone who is supposed to be a professional service provider.

- We also kept a record of when builders were on site from January. Between January 1st and the 22nd February there were a total of 45 working days - of those Mr XXXXXXXXXX only sent someone to site for 20 of those days.

The consumers have provided a copy of a works and schedule programme dated 22nd March 2018. This has a list of works against various prices and a precise payment plan. There are nine emails which the consumers have listed and commented upon what they show. This is as follows;-

Emails:

RE 201804051150.pdf.msg - proof and project chart from Mr XXXXXXXXXX with completion date of June 2018

Re_ Kitchen.msg - Mr XXXXXXXXXX then lied about the previous schedule not including the kitchen and lower terrace works, which it clearly does. He then issued a revised timeline with a completion date of 16 July 2018

Flat status and christening.msg - Email from 15th July confirming how little had been done, despite a promised completion of the next day. Also shows how naive we were early on by being positive about the work his builders had done - from this point the gravity of how bad they were started to become apparent.

Re_ Balustrade and Snagging.msg - Yet more proof of Mr XXXXXXXXXX's continued lies about key activities - here he had promised the scaffolding (which is of course needed for finishing the work) would come down by 14th August 2018. The scaffolding is still up today.

Re Scaffolding .msg - Now Mr XXXXXXXXXX is assuring us the scaffolding will come down by the 14th September - it never did, more lies.

Re_ To-Do List - 163A LRR.msg - continued inability to keep to any schedule or timings and a complete lack of care. Refusing to reassure us about timings or commit to anything.

RE_ Update.msg - continued complaints to Mr XXXXXXXXXX about the lack of progress and any urgency to finish the job with reasonable care, skill or timing

Re_ Update please.msg - Again, yet more evidence of how unhappy we have been with how Mr XXXXXXXXXXX has managed this work. Evidence Mr XXXXXXXXXXX snuck in to avoid us.

In summary, the consumer evidence filed with the claim relates to the dealings between the parties. Whilst the information is useful background, the crux of the claim is what the trader is alleged to have done wrong and how much will it cost to put right.

The evidence submitted by the consumer in the report from Berry Lodge Chartered Surveyors by Karim El Shenawi-Ali dated 15th August 2019 has been much more focused. *"The purpose of the report was to undertake a defect analysis investigating and reviewing the proposed roof works for damage and workmanship."* The surveyor was also able to produce a detailed snagging list of works outside of the above remit.

Next on 5th September 2019, the consumers were able to provide detailed costings for their claim;-

Dear Ayub,

As requested please find below and attached our response to the orders:

Orders 2 & 3

We have grouped these two together as although the defects and snagging surveys have highlighted additional issues we have not added these to our claim. With everything happening and baby due imminently we have not managed to obtain quotes for these issues. You will find attached within the ZIP file a spreadsheet named "Quotes Breakdown.xlsx" which contains a table detailing exactly how we came to our claim amount. The cells highlighted in Green across the table indicate which quote we used for our claim from each company along with the total amount claimed.

It includes two sets of quotes from building companies (Orchards, Greenlife), one set of quotes from a dedicated roofing company (London Roofing), one set of quotes from a dedicated balcony company for the terraces (Area Cubed) and one set of quotes for the balustrades on their own (Balconette).

As you can see we predominantly used Orchard's quote for our claim, as it is the most complete/all encompassing quote for all the outstanding works. We did, however, recognise that in order to obtain an accurate baseline for the work we should obtain additional quotes.

We wanted to be very thorough on this by approaching builders, roofing specialists and balcony specialists - all with membership of at least one professionally recognised and accredited association.

This was also in order to potentially split the work. Due to Mr XXXXXXXXXXX taking payments for substantially more than the work completed, added to the additional financial burden of having to re-do so much defective work we are having to prioritise what we can afford to do right away to make our home safe and water tight - and then go from there.

In the same ZIP folder you will find a folder named "Quotes" and then each company's quote within their corresponding folder.

Order 4

Within the zip you will also find a folder named "Burlington" and this contains all the invoices issued to us that we paid.

Within that same folder we have included the original schedule of work from Mr XXXXXXXXXXX we signed in March 2018 (PDF file) as well as the final updated client draft program works that was sent

to us by Mr XXXXXXXXX in June 2018 (XLSX file) when we asked for the "updated project plan based on revised timelines and taking into account the full job" in our email labelled "RE_Kitchen.msg".

What you will note is that in that original quote update from Mr XXXXXXXXX he had the cost of Board out under front eaves as £1230. We pushed back on this and he subsequently amended this down to £640 as can be seen in the email labelled "RE_Catch up.msg"

As you can see we have paid Mr XXXXXXXXX a total of £68,544 and the final agreed quote update referenced in the above emails shows an overall final full total for all the works as £65,255 EXC VAT = £78,306 INC VAT.

Please note this £65,255 EXC VAT total takes into account the reduced boarding out eaves (at £640) as well as the addition of a fire door (at £130) and the spotlights fitted in the kitchen (at £250) which we agreed to.

We have already provided substantial photographic and written evidence, both from us as well as the recent surveys which demonstrate the current state of our home - the defects clearly detailed as well as the very clear lack of any roof terraces at all. If there is any specific evidence required to demonstrate that the roof terraces have not been done please let us know and we can take additional photographs etc..

We will also send a separate email in response to Mr XXXXXXXXX's response to our claim - by the 16th September as directed.

Many thanks

Alex & Leila

Finally, under the consumer evidence, a reply was made to the response by the trader. There is copied below the first paragraph only;-

Mr XXXXXXXXX was at no point waiting for a Party Wall agreement. In the attached email labelled "RE_Loft project.msg" you can see a detailed conversation between ourselves and Mr XXXXXXXXX trying to understand the Party Wall award purpose and process. We were very clearly novices at building work and clearly uncertain on this area, so we asked Mr XXXXXXXXX lots of questions on this and asked for his direction. He was our contractor and subject matter expert and we relied on his expertise to make decisions up until the issues started happening. We took his advice and he commenced work immediately and would only pause should our neighbours complain. As you can see he cited two other clients that he did exactly the same for. At the time this seemed like the right decision that would save us a lot of money, however in hindsight we entirely regret this decision as, in addition, it would have meant another professional keeping an eye on the work being completed and perhaps the work would have been completed correctly and timely

The Traders evidence

In response to the claim, the trader submitted a lengthy response by email dated 2nd September 2019. Much of it related to the inability to carry out terrace and balustrade work. The Trader deals with the extensive complaints set out in the consumers case in one sentence stating 'The outstanding Building Control Issues (French door, skylight, roof leak ponding, and Fire Doors) have been addressed in the attached, response Spreadsheet'.

Before going through the detail in the attachments the relevant text of the traders response is as follows;-

“.....Notwithstanding the above: The trader has been waiting since works commenced, in April 2018, for the Consumer to provide the Party Wall Award to allow the Terrace and balustrade works. As ADR will be aware a Contractor cannot arrange Party Wall Awards under the Party Wall Act. The Consumer failed to appoint a Party Wall Surveyor, (PWS) (see attached email confirming no appointment), so the Trader was unable to liaise with them as to the details they required, as per usual practice. As the consumer never appointed a PWS it was not possible to complete either of the roof terraces. Attached are the structural drawings submitting to building control which have been approved, as per BCO email of 31.5.19, see attached 2nd Building control letter.

It is not reasonable to expect the contractor to complete other non-safety items on the contract while withholding key elements for so long, that would allow completion. The Trader chased the Consumer on numerous occasions to provide the Party wall award, to enable the completion of the works, including on 12.3.19, 19.3.19, 24.4.19, as per attached emails. To date the Consumer has issued no such Award, and therefore frustrated and prevented the completion of the works and contract. The Trader is therefore entitled to loss of profit as if the contract had been completed.

None the less the Trader requested clarification of items in April (24.4.19) and in order to be able to continue the works; no such clarifications were received.

For the avoidance of doubt the terraces and Balustrades have been designed by a fully qualified Structural Engineer, which the Consumer attempted to engage directly on their own during the works, these were approved by the BCO in their 2nd letter, as attached. The balustrades for the terraces, of the consumer's choice and approval, have been made and have been ready to ship since February. Of which the Consumer is aware.

The hire of scaffolding for the period during which the client has prevented the Contractor from completing the works is chargeable while awaiting the Party Wall Award. See attached email.

As regards the time taken, it is wholly unreasonable the Contractor should be kept waiting over a year for the Client to engage a Party Wall Surveyor to enable the Roof Terrace and balustrade works. Irrespective of the other items, it is clearly not possible for the Contractor to finish these substantial elements of the works without the PWA, for which the Client is solely responsible.

The outstanding Building Control Issues (French door, skylight, roof leak ponding, and Fire Doors) have been addressed in the attached, response Spreadsheet.

If other information is required, please let us know.

Regards

Burlington Renovations”

The attachments consist of;- A letter from Ascent Building Control dated 2nd November 2018. Clearly, this is not the building control letter/email dated 31st May 2019 referred to above. We then have a series of architectural plans showing the existing and proposed plans. We have the traders T & C's. A doctors note. A letter from Gas Safe Register dated 14th October 2018 with a certificate dated 11th October 2018. A kitchen layout plan and an updated works schedule dated 22nd March 2018.

I do not see any of the documents referred to as enclosed with the email. I am inclined to believe that the documents do exist but have just not been properly attached for one reason or another. This is because the trader has been able to make reference to them with some precision but not then attach copies.

Next was the trader's response to the expert evidence relied upon by the Consumers which was received on 20th September 2019. The trader objected to the service outside of the period allowed. Whilst this is correct this was the end of the process of exchanging information. What remained was a review of the evidence by LAC which was not effected by the late service. I have therefore considered and fully taken into account the evidence supplied by the trader in my decision.

The Trader went a little further than just replying to the expert by stating (in relation to the works on the terrace):-

The alternative quotes for the terrace completion cannot be entertained as it is due to the consumer's failure to produce a Party Wall award that has prevented those works from progressing any further. Obtaining quotes for the completion of these above the contract rate, when the delay is entirely due to the consumer is a failure to mitigate their costs. The trader has ordered and built the balustrades chosen by the consumer and approved by building control. Therefore the Consumer owes the trader for the full value of the balustrades, and will deduct the residual value of fitting. In any event you will notice the consumer has asked balconette to quote for larger systems on the lower terrace than on the schedule. Burlington, as the consumer is well aware, has ordered and had manufactured the balustrades according to the contract. If the consumer wishes to order afresh direct from balconette, this is entirely at their own expense. This is a failure to mitigate their costs.

The attachments consist of a report by bhagals construction consultants dated 16th September 2019 and the trader's T & C's.

The Procedural history

By notice dated 8th July 2019, the trader formally consented to the dispute being resolved by the LAC in accordance with its rules. The trader did not, however, pay the ADR fee applicable at the same time as returning the consent form. The trader was requested to pay the fee within 7 days which he did not do.

The start of the ADR was untidy to say the least. The trader asking for a VAT invoice and intimating payment after his return from 'leave'. On 15th July 2019, an Unless Order was made to deal with non payment of ADR fee. It should be noted that the ADR fee is payable by the trader in accordance with the regulations under which the ADR service is provided by LAC.

The consumer was also requested to serve evidence in support of the claim on the trader and also complete and return a schedule showing a breakdown of their claim for damages. By email dated 22nd July 2019, Mr XXXXXXXXX stated that the holiday did not happen and that his wife had been taken ill. Mr XXXXXXXXX stated he would not be able to carry out any work for the next 3 months. This was understood by myself as an application for a stay of the ADR.

The 'application for a stay' was opposed by the consumers and an order was made refusing the application but on the premise that the process of the ADR would allow for his personal situation in terms of additional times.

There continued to be issues getting process started. Mr XXXXXXXXX now indicating that the ADR fee less the VAT would be paid. There was also a technology issue which caused the information supplied by the consumers to be posted to the trader in the form of a computer stick.

Initially the trader was given until 16th August 2019 to respond to the claim. This was extended to 27th August 2019. In the meantime, the consumers provided the schedule showing a breakdown of their claim to £58,665.74 by email dated 19th July 2019. The consumers also stated in the email;

As discussed please find attached the completed schedule of defects/losses.

The evidence has also been sent to Mr XXXXXXXXX via a wetransfer link.

Since we submitted the evidence we have received a formal letter from the door supplier Mr XXXXXXXXX used, QuickSlide, as additional evidence supporting the issues with the Juliet doors, also attached.

We also wanted to elaborate on one main point in our description of claim:

"Mr XXXXXXXXX has maintained that he is unable to complete the work due to the lack of a party wall agreement with our neighbours. This is ongoing and due to be in place in the next couple of weeks. His excuse is not valid for any of the other, very serious and extensive work from the list and only valid for the terrace work."

It is important to note that although a PWA is needed to construct the loft terrace - this work cannot commence until the roof weather proofing defects are resolved:

- The loft terrace work cannot proceed due to the extensive issues with the GRP and mansard roofing which will now need to be re-done to address the very poor construction, complete absence of an up-stand and extensive leaks we are suffering as a result of these numerous weatherproofing defects.*
- As per above note, the PWA has always been irrelevant for all of the other issues with the work, e.g. juliet doors, snagging, weather proofing, kitchen work, decorating etc...*
- We also want to make the point that back on the 27th July 2018, Tom, the foreman employed by Mr XXXXXXXXX, confirmed to us that all party wall work would be 100% complete by the following day - we had no idea that a PWA would still be needed until more recently. We have the whatsapp message to share upon request.*

If any further information is needed please let us know.

By email dated 29th August 2019 the consumers provided further evidence in support of their case in the form of a report by Berry Lodge Chartered Surveyors. The consumers stated;-

Dear Ayub

We recently commissioned a detailed survey to be taken of our property so that we can A) capture in detail a full technical breakdown of the state of the flat as a result of Mr XXXXXXXXX and Burlington Renovations' work and B) Ensure nothing has been missed regarding what is needed to repair and complete the works. This was completed by an independent 3rd party surveyor, Berry Lodge surveyors.

This was crucial so that we can try and make our home safe for when our baby arrives at the end of September and prioritise the right elements to do this. Due to the difficult financial situation we have now been put in having to repair and complete work we have already paid for we are having to do this in stages, focusing on the many defects causing leaks and safety issues and save money where we can to get it all done over time.

We wanted to share these with you asap in case useful/needed for making your decision.

Many thanks

Alex

As a consequence a further Order on 29th August 2019 was made to allow for the additional evidence. This order is set out below;-

ORDER

- 1. The trader provide a response to the Surveyors Report of Karim El Shenawi-Ali on behalf of Berry Lodge Chartered Surveyors and the snagging list by 12.00 noon on Monday 16th September 2019.*
- 2. The consumers provide quotes from FMB (Federation of Master Builders) contractors in support of the remedial repair identified in the Surveyors Report by 12.00 noon on Monday 16th September 2019.*
- 3. In so far as the same is not dealt with above, the consumers provide a copy of the quotes received in support of the claim for £58,665.74 by 12.00 noon on Monday 16th September 2019.*
- 4. The consumers provide further information on what sums have been paid by them to the trader and what work is incomplete (as opposed to alleged defective work carried out by the trader) by 12.00 noon on Monday 16th September 2019.*

On 2nd September 2019, the trader responded to the claim. On the same date, the consumers were informed that they were to be given an opportunity to reply which they had to do by 16th September 2019.

By email dated 5th September 2019, the trader asked if they could respond to the consumers expert report with their own independent surveyor. The trader was informed that they were entitled to do so but then the trader did not subsequently do so because of the insufficient time in which to do so.

I believe I should set out the text of the relevant emails because the trader did not then go on to provide any response to the report of the expert by 16th September 2019 but did do so on 20th September 2019 (see above).

Dear Mr XXXXXXXXXX,

No further time is to be allowed. Reasons: There is no correlation between personal circumstances of the trader and the availability of any expert so instructed.

Kind regards,

Ayub Sadiq

Dear Ayub

I'm afraid there is a direct correlation.

The trader's key employee is signed off work, un fit for work, and so cannot instruct the specialist, or analyse their report, as he has best knowledge of the project, in a normal time frame.

Are you expecting the specialist to attend site and return their report within 4 days, including the trader being able to check and comment on.

Kind regards

Steve

Dear Mr XXXXXXXXXX,

We all have problems in different degrees at different times. If you are running a business you need to do so without falling below standards expected by the law. I can see that you have a well written out contract and even rely on comprehensive terms & conditions of trading. You are therefore someone who does have the capability to run the business. It is within your capability to instruct an expert and/or appoint someone to handle the affairs of the business in your absence.

In relation to you having the necessary knowledge. I think this is correct but I am assuming for the time being that you also have a proper complaints process which has been exhausted here before this dispute has been referred to us. It seems to me that these are all matters that should have been investigated fully beforehand and therefore the arguments and/or submissions should be well versed right now.

The ADR has already been extended. I understand Mrs Neathercoat is expecting a child and I do not want to add stress to their situation either. I have to balance the interest of all parties. There will be no extension of time.

Kind regards

Ayub Sadiq

Dear Ayub

Thank you for your reply. I do not believe Burlington is going to get a fair hearing with ADR.

ADR are confusing the ability to run a business in normal circumstances with the key employee being declared unfit for work, yet assuming capable of instructing and managing others in a process they have the key knowledge, in extra-ordinary circumstances. Which is not logical.

My wife was re-admitted to hospital yesterday, and cannot be alone, and is verge of a breakdown. My father's funeral is next week, Thursday. It is therefore obvious I am not able to instruct or assist others in a meaningful way, (that's the key, meaningful way, can go through the motions but will not be a proper response or defence). I can start preparing those things until after the 20th September.

A surveyor is looking at the quotes received, but I do not have time to check or analyse. No one else can do that. This process has become prejudicial without an extension of time.

I sincerely wish Alex and Leila all the best for the new arrival, which is truly wonderful thing.

Kind regards

Steve

Next in the procedural history, the consumers replied to the trader's response by email dated 16th September 2019. By email dated 20th September 2019, the trader provided a response including a report from 'bhangals construction consultants' and the traders T & C (annotated with 'use this').

The consumers objected to the late service of evidence which I have already dealt with above.

I believe it is also important that I set out here relevant communication with the consumers in particular in relation to the loss claimed by them.

By email dated 29th August 2019, the consumers requested clarification of the order made on the same date.

Dear Ayub,

We are very happy to provide all of the required details - we already have everything.

However a couple of points please for clarification.

Firstly - we are not sure if we are legally allowed to share the details and private quotes from these building companies with Mr XXXXXXXXXX as these have been shared with us as potential clients. We still want to demonstrate how much due diligence we have done on this and justify our claim quote. We have sourced multiple quotes with some covering the majority of the works whilst others specific areas (i.e. roofers).

Can we please anonymise these when sharing with everyone and then separately share with you only the details of the building companies. We do not want to jeopardise our relationship with these companies and risk losing access to these quotes as a result of us divulging a private quote to another builder (Mr XXXXXXXXXX).

Secondly - the surveyors have recommended FMB however it should be noted that the Federation of Master Builders is not the only accredited trade body and we have been looking at others, including The Guild of Master Craftsmen, The Chartered Institute of Building, Safecontractor Approved, Trustmark, NFRC, CITB. Also please note that we have been sourcing quotes since the time Mr XXXXXXXXXX downed tools and this survey has only just been completed. Thankfully we were prudent in only seeking quotes from builders accredited with at least one of the above trade associations.

Many thanks

Alex & Leila

The response was an email and further order dated 30th August 2019 as follows;-

To Both Parties

Reasons for the Order below

The ADR must be an open and transparent process in order that justice can be done. This means any claim for damages must be supported by evidence which has been disclosed to the other party. The ADR can't be conducted with evidence which has not been fully disclosed to the other party.

The normal process of proving loss is to supply quotations from third parties as a means of showing what will be the cost of putting something right. That is not the only means by which loss can be quantified - the snagging list alludes to 'Costings are based on the Surveyor's judgement and experience' but for whatever reason the Surveyor is unable to provide these to you except make the recommendation he does. Therefore you must supply evidence to substantiate the claim for damages, however, the form of the evidence is a matter for you although I recognise the evidence need not be in the exact manner specified by the Surveyor.

ORDER

Paragraph 2 of the Order dated 29th August 2019 is amended in the following terms;

"The consumers provide evidence in support of their claim for damages in relation to the remedial repair identified in the Surveyors Report of Karim El Shenawi-Ali on behalf of Berry Lodge Chartered

Surveyors and the snagging list and in relation to the other items of alleged defect by 12.00 noon on Monday 16th September 2019."

The law

I believe it will be useful that I set out here the law and the test I have to carry out before a claim can be made out for damages. Briefly, there must be a breach of contract. This means there must be in breach of a contractual term.

Contractual terms are usually agreed between the parties when a contract is formed. In simple terms, a contract will be formed when there is an offer and acceptance. In typical building contracts, the trader will have made an offer comprising items of work under the terms (or T & C's) under which the work is to be carried out. There might be a works schedule specifying which works are to be completed over a any particular phase. The parties might also typically agree a payment schedule . A contract is formed when the consumer accepts the offer.

Sometimes, contractual terms are incorporated into a contract by reference. This means the offer or acceptance itself will not list all the applicable terms but will make reference to the existence of a document evidencing the T & C's. The important point to note is that T & C's must be incorporated into the contract at the time of the formation of contract. A trader cannot rely on T & C's which have not been brought to the attention of the consumer before the contract was formed.

On the side of the consumer, the law implies terms into such contracts. Significant implied terms are set out in the Consumer Rights Act 2015. Relevant in this instance is Section 49 which states;-

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.

If I find the trader is in breach of section 49, I have to assess the loss arising from the work carried out by the trader which has not been performed with reasonable skill and care. Normally, this will be the cost to the consumer putting right whatever work has not been carried out using reasonable care and skill. This means the loss claimed by the consumer must be supported by evidence.

There is another aspect of the law which touches upon the circumstances of the case which is 'misrepresentation'. A misrepresentation can give a party the right to rescind the contract. This returns the parties to the positions they held before the contract was made. This aspect of the law relates to the use of trade logo's of which it is alleged the trader was not a member. The trade logo in question appear on the trader's terms & conditions supplied as part of the consumers case. The Logo's are 'ARMA' (The Association of Residential Managing Agents Ltd) and 'HomePro' (who appear to be insurance agents specifically for the building trade).

Before moving on from matters of law, I should also mention here that it is not uncommon for the parties in dispute to have cross claims or counterclaims. I can see that there appears to be such a cross claim in this case by the trader which is evidenced by his email dated 2nd September 2019. The trader was asked to respond to the claim by the consumers. A claim is made for the kitchen and terrace work in the sum of £14,472.00. A further claim from the trader is made in his email response dated 20th September 2019. This is the trader's response to the expert evidence relied upon by the consumers. The sum stated by way of cross claim is '£49,472.304' I think is an error. The sum below this figures states £41226.92 and includes the sum claimed on 2nd September 2019.

I will not be making any decision on the trader's cross claim for the following reasons ;-

1. This ADR is to resolve the consumers claim set out in the claim form dated 23rd June 2019 to which the trader agreed to resolve by ADR by notice dated 8th July 2019;
2. The trader has not submitted his own claim against the consumers to LAC previous to the above mentioned communication and no consent has been sought from the consumer to resolve that dispute through ADR. Therefore no process has been provided in this ADR to deal with the cross claims by the trader. The process would, at the very least, require evidence from both parties, to determine liability for the cross claim made by the trader.

it is for these reasons that there will be no adjudication on the traders cross claim. That is not say that the trader does not have a cross claim or that the cross claim itself cannot be a defence to the claim by the consumer. The cross claim may amount to a defence say if, for example, the trader was not able to properly carry out any works because a neighbour's consent was lacking. That is, however, separate to a claim by the trader for a claim for their own loss arising from such an event. Such a claim is not part of this ADR and the trader is able to bring such a claim outside of this ADR if the trader believes that they have a valid claim.

The traders Terms & Conditions

In response to the claim, the trader has annexed T & C's to his email dated 2nd September 2019. I note these are the same T & C's which have been submitted by the consumers in support of their claim as to the alleged unlawful use of trade logo's.

When I look at the background in which the T & C's were supplied to the consumers I see an email dated 16th April 2019 from the consumers in which they request the traders T & C's and following the email chain there is an email dated 23rd April 2019 from the trader stating;-

Subject: RE: Terms & Conditions

Hi Alex

Will endeavour to get ts and cs to you next couple days, as my wife's father died last night after many months of illness, mine is mid various cancer treatments.

With kind regards

Steve

In their response to the consumers expert witness evidence, the trader has submitted a further copy of his T & C's by email dated 20th September 2019 annotated 'use this'. The difference between the two appears to be that the latter do not have the trade logos shown.

I can deal with this very quickly. I find that the T & C's supplied by the trader as shown above have not been incorporated into the contract for the reason that they were not brought to the attention of the consumers before or at the time the contract was made. I have a letter from the trader dated 22nd March 2018 providing the quotation to the consumers with a start date on 9th April 2018 absent any reference to the T & C's not relied upon by the trader.

The flip side of this is that I do not find there has been any misrepresentation either. If the offending trade logo's had appeared on the letter of quotation referred to above then the consumer would have been entitled to rescind the contract entirely and seek return of all the money they had paid the trader. There is no evidence that the consumer even knew about the false trade logo at the time the contract was agreed. A misrepresentation after the contractual works have been carried out is ineffective.

My findings on the items of claim

The claim set out by the consumers for The Juliet doors in the schedule of loss is £1250.00

The traders comments in the report of bhangals construction consultants state '*the doors may require refitting*'. This is not a defence to the claim on the Juliet doors and is more an admission of liability. I accept the evidence of Quickslide who have provided evidence on behalf of the consumers which I have referred to above.

Bhangals have qualified their report on costs stating;-

It should be noted that, with the limited information available at this stage, the costs should be treated as preliminary and an indication only of the costs that may be incurred. Accurate costs can be ascertained when the brief is established.

The £200 cost put forward by bhangals is upon the premise that "*(they) have based our price on removal of door, refitting and sealing*". I therefore do not regard as reliable this solution. They provide a cost on removal and refitting. Clearly, this is not going to be possible if the doors have been damaged as is apparent from the evidence of Quickslide.

I accept the consumers claim to damages in the sum of £1,250.00. These works are supported by a quotation from Orchards dated 31st March 2019 for supply and install.

I award £1250.00 to the consumers under this item of claim.

The claim set out by the consumers in the schedule of loss for the defective Skylight is £1896.00. These works are supported by a quotation from Orchards dated 31st March 2019 for supply and install.

The consumers rely upon the report of Karim El Shenawi-Ali on behalf of Berry Lodge Chartered Surveyors dated 15th August 2019., Mr. Shenawi-Ali states that the skylight window has failed '*due to condensation build up between the double-glazing and needs to be replaced. This is due to the seals around the perimeter of the access hatch, which have insufficiently been installed allowing moisture to enter between the glazing and causing it to fail*'. Against this, the traders comments in the report by bhangals state; '*Skylight itself fine - refit cost for greater angle and renew flashings*'. This does not reconcile well with the evidence of Mr Mr. Shenawi-Ali who states the window has failed. He is an expert independent of the parties and his evidence carries more weight than the parties themselves.

I accept the evidence of Mr. Shenawi-Ali. His findings are based upon an inspection. It therefore follows that the I accept the work that needs to be carried out is that set out in the quotation supplied by Orchards and not the £450 suggested by bhangals for different remedial works.

I award £1896.00 to the consumers for the loss sustained on the defective Skylight.

The claim set out by the consumers for the loft terrace water ponding is in the sum of £540.00. These works are supported by a quotation from Orchards referred to above.

Mr Shenawi-Ali states;-

The roof is not sloping sufficiently towards the gutters as there are protruding ridges bordering the flank wall of the back addition. This can result to pooling and freeze thaw action. One of the main indicators is the visible staining along the ridges of the roof surface

And goes on to recommend that a contractor be engaged to supply and refit the roof coverings.

The trader in the report by bhagals states '1 day, with materials -£380.00 Assumed remedial works'. This is not a defence. bhagals cost the works at £400.00 but is qualified by 'assumed' building works in addition to the qualification that they have not carried out an inspection contained in the preamble to the report.

I award £540.00 to the consumers for the loss sustained on the loft terrace water ponding.

The consumer claim that the Electrics in Kitchen are defective and dangerous and claim £710.00

This is made up of a quotation from Orchards for *the Installation of Isolation points for: cookerhood, oven, washing machine and dishwasher, based on one day labour and material in the sum of £360.00 (excl VAT)* together with a fee of £350 for electrical survey report.

I have seen reference in an email dated 15th February 2019 to an engineer being called by the consumers to look at the extractor fan installed by the trader. I have not seen reference to any electrical report or a bill in respect of the same.

I have not seen any other response which might be considered a response or a defence to this aspect of the claim. I have seen a report of Assent Building control raising issues about electrical lighting and sockets.

I do not regard the traders response in the report by bhagals as a defence to the claim to the effect; " *Electrician half day for connector and isolator, inc materials*". I note the costings put forward by bhagals in this respect is also £360.00 which is based upon *Based on isolator and connector* only. I award the cost claimed less the cost of electrical survey report (see below).

I award £360.00 to the consumers Electrics in Kitchen defective and dangerous.

The consumers claim for the incorrect boiler installation.

The consumers claim £2806.00 for the incorrect boiler installation. This supported by a quotation from Orchards referred to above as follows;-

Supply and fit new Bosch Worcester Greenstar 32CDiCompact Combination boiler & Hive thermostat, including work to change old system and set up new hive*

I note the response of the trader in the report by bhagals who states;-

The Contract Schedule does not specify boiler make or type, the boiler installed has sufficient capacity for the property. If the Consumer wishes a higher specification of boiler then a higher price needs to be applied. Either way, no deduction can be made Complainant continued to use the boiler through out and Gas Safe did not shut down the installation. The Installation remedials were corrected by the Gas Safe engineer who certified the installation. The remedials works are complete, no deduction can therefore be made. See attached Gas Certificate.

The work is listed at item 27 of the schedule of works dated 22nd March 2018 supplied to the consumer by the trader. Against this there is email evidence (email dated 20th March 2018) as to what type of boiler the consumers were expecting -see above. paraphrasing ;-*We'd like to agree on which boiler will be fitted too. Please could you send us the details? – would be Worcester bosch cdi probably 32kw*

The only 'probable' is the '32kw'. Probable means more likely than not. It does not mean the consumers will be required to pay a higher price. The proviso might have assisted the trader if the particular specification was no longer in stock for supply.

I find that the trader has contractually bound himself to supply the Worcester bosch cdi by reason of the fact that this was discussed and agreed before the date of the contract. If I am wrong about this, this is a clear misrepresentation by the trader which would entitle the consumer to rescind this part of the contract.

On page 2 and 3 of the report of Kevin Carroll dated 3rd May 2019 (see above) it is clear that the boiler is classified by him as 'not complaint with building regulations', 'at risk' and 'not to current standards'. It is noted that the boiler was left operational. I have seen a letter to Dawid Palka dated 14th October 2018 with a gas compliance safety certificate. There is no gas certificate attached to bhangals report.

I find that the trader committed himself to a particular type of boiler when the contract was agreed. I also find that the cost or repair and/or replacement is reasonable given that the original cost was £2160.00. The trader states that the defects were made safe. I have seen no evidence of this. If there was an alternative cost of making the boiler safe that would have made no difference in the light of my finding above. The conclusion from the evidence of Mr Carroll must be that the boiler has not been fitted using reasonable skill and care. If the trader has made the boiler safe, that's not apparent either.

I award £2806.00 to the consumers for the loss sustained on the defective boiler.

The consumers claim £766.75 for the radiator in the kitchen being removed. This is supported with a quotation from Greenlife (undated) referred to as 'quote 1950'.

The trader states in the report by bhangals that; *-Radiator not shown on client kitchen drawings.*

There is no attachment in this respect from bhangals. If this attachment is the same as the file headed kitchen layout in the trader's evidence on 2nd September 2019 then no significance is to be attached to the drawing because the consumer is not saying there is no radiator in situation. I have seen a picture of the radiator in the consumers evidence -see above.

The only conceivable defence to this item of claim must be that its removal was contractually agreed. There is no mention of this in the purported defence to this item just that it does not appear in a sketch. This does not help the trader. He is the expert and the one who ought to check any discrepancies that might appear to him during the course of the works. Simply saying, there is no radiator in any drawing does not absolve the trader from liability.

I award £766.75 to the consumers on the issue of the radiator in the kitchen being removed.

The consumers claim £9,545.00 in relation to the GRP roofing poorly constructed, defective and leaking. The damage is supported by the report of Mr. Shenawi-Ali referred to above. The consumers rely on the quotation by Orchards dated 18th June 2019.

The trader states in the report by bhangals; *-The roof structure is sound. There are some finishing and repairs due on the fibre glass GRP finish, which would take a 1 roofer 1 day, with GRP repair kit. And 1 day 1 roofer to fix flashings, plus materials. Building control have no issues with the structure or roofing system installed. Remedial repairs and installation of flashings will address the issue*

I prefer the evidence of Mr. Shenawi-Ali. He has carried out a full inspection. His evidence is detailed and thorough and backed up with photographic evidence. I therefore have difficulty accepting that *'There are some finishing and repairs due on the fibre glass GRP finish, which would take a 1 roofer 1 day, with GRP repair kit....'* The difference between this and what Mr Shenawi-Ali states cannot be reconciled. By way of example, Mr Shenawi_Ali states *"The roof is not sloping sufficiently and one of the main indicators is the visible staining along the ridges of the roof surface..."*.

Therefore whilst there might also be minor repairs there also major ones. Furthermore, the trader ought to have provided costing based upon works identified by Mr. Shenawi-Ali rather than costings on works his own expert stated just in case the evidence Mr. Shenawi-Ali was preferred over the evidence of bhangals. In other words, suggested an alternative quantum subject to liability.

I award £9,545.00 to the consumers for the loss sustained on the GRP roofing poorly constructed, defective and leaking.

The consumers claim £3,075.03 in relation to Snagging (Karndean, Fire Doors, neighbour's roof, ceiling rose). The consumers rely on the quotation by Orchards dated 31st May 2019. This covers the defects complained about by the consumers to the flooring, fire doors and damage to the neighbour's roof.

In the snagging list report of Mr. Shenawi-Ali he states;-

Kitchen Floor Generally speaking, the floor tiles or laminate appears to be generally uneven throughout with various ridges, which is a result of poor workmanship and poorly-installed floor coverings.

I recommend reinstalling the floor coverings.

The only reference he makes to the doors is that they operate smoothly. I accept that an issue was raised with the fire doors by building regulations but they state in the email dated 15th February 2019;-

Please note that we are happy to accept a intumescent painted solution to be applied to the doors albeit both sides are to be painted and panels must have intumescent paper applied with a paint coat over – if using accredited paint suppliers like Envirografe they will also certify the doors when using their products, I hope this helps

On this basis, I do not believe replacing the three fire doors is recoverable.

I have not seen any invoice demand or request for payment from any third party (i.e the neighbour). Orchards state in the quotation the work here is *'Neighbour's roof tiles-Cement spills on roof tiles not cleaned'*- I am inclined to believe (although do not know) that the neighbour's have not regarded this matter sufficiently serious to make a formal claim against the consumers.

In relation to the shower hose (£47.70) and ceiling rose (£14.17) these appear not to have been added to the consumer's claim although I note bhangals have allowed more *;Supply and install replacement ceiling rose -£85.00 Replacement ceiling rose (PC Sum) -£100.00 Neighbour's Roof - 1 day make good, 1 roofer -£310.00 Assumed 1 day making good"*

In relation to this aspect of the claim, the trader states in the report by bhangals;-

Snagging - 1 day karndean repair man. -£200.00

I prefer the detailed specification provided by Orchards in this respect who give a full account of the works;-

To remove and replace 1 no fridge & 1 no washing machine. (item) To take up existing covering for disposal. Apply 6mm plywood & prepare to received karndean flooring To supply & install Karndean Oakley LM11 vinyl tile. To supply & fit aluminium threshold.(item) Prices are based on uninterrupted working to clear areas during normal working hours

I award £1,737.86 for the Snagging Karndean flooring.

The consumers claim £2,400.00 in relation Loft rooms not finished – decorating and plumbing. The consumers rely on the quotation by Orchards dated 31st May 2019.

"Loft areas (hallway, bed room and bathroom) require decorators finishing-tidying, smoothing, painting. Bannisters-sanding, smoothing and painting with gloss." These items of work are required in accordance with the snagging list report of Mr. Shenawi-Ali referred to above.

bhangals allow £600 for this item. I note the trader states in the report by bhangals; *"Top coat paints have been applied. Possible one coat touch-ups -£350.00*

bhnagals then state; *"Touching up and making good (based on 2 days) and materials £600.00"*

The difficulty I have with the trader's sum is the qualification in the preamble which I have referred to above. In the absence of a second comparable quotation (without any qualification), I must accept the quotation supplied by the consumers.

I award £2,400.00 in relation Loft rooms not finished – decorating and plumbing.

The consumers claim £350.00 for the Juliet balcony railing not installed and incorrect size.

The trader states in the bhangals report *"Juliet balcony railing not installed and incorrect size £350.00 Agreed"*

This item of loss is therefore agreed by the trader.

I award £350.00 in relation in Juliet balcony railing not installed and incorrect size.

The consumers claim £25,549.34 for the construction of two terraces.

I have a real problem with this aspect of the claim. This is not a claim for a breach of section 49 of the Consumers Right Act 2015 (see above). It cannot be stated that the trader has failed to carry out works with reasonable skill and care. The claim is more accurately described as a claim for breach of an express term namely a term in the contract which required the trader to construct the two terraces.

If the trader is in breach of an express term then the consumers remedy is in the difference in price between what it would had cost the consumers and what it actually costs the consumers. Conceivably, there might not be any difference . Alternatively, if the consumers have advanced any money to the trader in respect of works which he has not carried out then, subject to any cross claim, the consumers would be entitled to a refund.

From what I understand, construction is part complete and/or costs have been incurred. The trader states; *The balustrades for the terraces, of the consumer's choice and approval, have been made and have been ready to ship since February. Of which the Consumer is aware (see above).*

The sum claimed is based upon quotations supplied by Orchards according to the quotes breakdown (although I have not been able to square the sums to the quotations itself).

Decking supply & install £3,072.72

Ballustrades install £1,800

Structural £12,350

On top of this there is the cost of the Balconette which is stated by the consumers in the Quotes Breakdown as £6938.85. I have seen a quotation for this sum from *balconette* dated 19th June 2019.

I can see that the consumers state that they have paid the trader the sum of £78,306.00 INC VAT. The invoices raised by the trader and paid by the consumers do not show exactly what work is being paid and what is outstanding. Against this the consumers have already informed me that they have paid for "90% of the payments for this work already despite not having completed the equivalent amount of work" (see above).

The problem I have is that I do not know from the information supplied to me how much the consumers have paid the traders for this aspect of the claim. The other problem I have is the trader's cross claim.

From the evidence that I have seen, incidentally, evidence supplied by the consumers, it would appear that there has been an issue obtaining consents under the Party Wall Act 1996. This evidence is set out in the reply by the consumers to the traders Response dated 16th September 2019 and the email chain under the 'loft project'. I merely repeat what I regard as significant;-

We took his advice and he commenced work immediately and would only pause should our neighbours complain. As you can see he cited two other clients that he did exactly the same for. At the time this seemed like the right decision that would save us a lot of money, however in hindsight we entirely regret this decision as, in addition, it would have meant another professional keeping an eye on the work being completed and perhaps the work would have been completed correctly and timely

I cannot accept this as the correct approach which the law expects. The Party Wall Act 1996 is legislation which applies to the consumers and not their agents. It would not be a defence under that legislation for the consumer to rely upon advice from the trader (if the trader was offering advice). I find that the consumers did not rely on the trader for advice under the Party Wall Act other than form an opinion of their own from the trader's experience. Like the consumers say *in hindsight we entirely regret this decision*.

From what I can see the construction has not fully taken place. The trader in the report supplied by bhangals states;-

Upper terrace built and building control compliant

Upper terrace balustrade awaiting client party wall award to fit. System as approved by client ordered, deposit paid, ready to install

Lower terrace awaiting party wall award to be able to install. Cost of lower terrace ordered and partially paid, goods waiting for shipment.

Complainant attempting to claim back values for works not done, £9588 and not paid for; for the lower terrace

Against this, the trader has made a substantial cross claim. I have already set out above why I am unable to make any decision on the cross claim

For these reasons, I therefore find this aspect of the claim not proven. I am neither finding in favour of the consumer or the trader. There is not enough evidence before me to decide this aspect of the claim. This leaves open the option of the consumers making the same claim again for repayment of sums paid for work not carried out or leaves open the option to the trader to make a cross claim.

I am not going to say what each party does to prove their claim but amongst the difficulties I have is how much has been paid for by the consumers for this aspect of the work, how much work has been done and exactly why the work was not completed. The explanation by the trader for not completing the work has not been tested or examined. One question might be how the trader managed to complete the upper terrace or other work that required approval under the Party Wall Act 1996. In other words, was the lack of consent under the Party Wall Act 1996 causative of the trader not finishing the works.

Against this the trader has set out a claim for losses under this T & C's. I have already found on the evidence before me that the T & C's were not incorporated into the contract. This is not to say, however, that the trader has not suffered loss if the party in default and in breach of contract is the consumers in relation to this aspect of the claim.

The parties need to decide between themselves if possible whether this aspect of the claim can be agreed between them, referred to ADR or whether one party wishes to take legal action against the other. This does not effect the award I make below.

I find that the consumer will have incurred costs in bringing the claim and will also have incurred other losses. This will include the cost of the surveyors report from Berry Lodge Chartered Surveyors and the Electrical report to which I have made reference above. I have not seen invoices to the consumers in relation to these charges and therefore I am unable to award any costs in relation to the same. This can also be said in relation to any claim for stress and inconvenience which they have suffered. This is a head of compensation which is recoverable in law but which the consumers have not advanced.

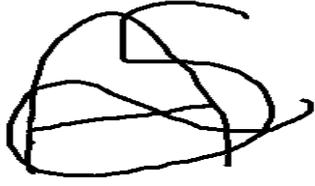
I am specifically leaving open these claims against the trader. Like the above, I find the claims not proven thereby leaving the option open to the consumers to include these in any further legal proceedings which might subsequently arise. The preference would have been to bring a final conclusion to the dispute between the parties but this has not been possible.

Summary

I want to make it clear that the trader does not have any right of set off or cross claim against the sum I am ordering the trader to pay the consumers. The only matter that remains is to add VAT to the compensation I find payable by the trader as above. The total compensation for the items listed above amount to £21,651.61. The VAT amounts to £4,351.92.

IT IS HEREBY ORDERED that the trader pay the consumer the sum of £25,981.93 within 14 days of the date hereof.

Date 21st October 2019

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, positioned to the right of the text 'Signed'.

Signed

Mr Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited