

CATCHWORDS: *Commercial and Consumer Tribunal Act 2003.*

REASONS FOR DECISION : Mr AJ Moon. Commercial and Consumer Tribunal. Brisbane. 30th June 2006

Introduction

- 1 This is an application by Coral Homes Pty Ltd ("the builder") to recover the balance of a contract price relating to the construction of a domestic dwelling for the respondent at Lot 48 Criterion Close, Bald Hills.
- 2 The builder and the homeowner entered into a New Home Construction Contract dated the 29 June 2002 for the construction of the dwelling.
- 3 The homeowner had viewed a display house which had been constructed by the builder and was desirous of substantially having a house constructed in conformity with what he saw, when he inspected the display house.
- 4 According to the material before the Tribunal, the commencement date was somewhere about early October 2002.
- 5 The builder delivered a final account summary dated the 31 January 2003, which claimed a balance of \$10,668.00. There seems to be no dispute about that amount, albeit, that the homeowner mounts a counterclaim for alleged defects or incomplete building work.
- 6 There have been many dealings between the homeowner and the builder since the commencement of the construction and it is fair to say that the nature and extent of the complaints by the homeowner have been very large indeed.
- 7 The Tribunal has had placed before it on behalf of the homeowner documents, statements, correspondence and submissions of enormous length and complexity.
- 8 When this matter came on for hearing initially, the parties were confined to, at least insofar as the applicant's cross claim was concerned, those defects in the list which had been prepared by the homeowner dealing with the defects as at the 18 January 2005.
- 9 It was apparent from the hearing of the matter that, the items dealt with in that list, fell into a number of quite specific categories.
- 10 Officers of the Queensland Building Services Authority ("QBSA") had provided a number of reports dealing with the alleged defects and other complaints over a period of time.
- 11 When the matter was first commenced, the application had attached to it a list of alleged defects amounting to 105.
- 12 By the time the matter came on for hearing before the Tribunal in 2005 the list had grown to a total of 257 separate items.
- 13 When this matter came on for hearing on the 27 July 2005 there were a number of items which the builder agreed were not complete or were in some way defective and which the builder agreed to complete or rectify. A list of those items was prepared and by consent, the builder was directed to rectify or complete such items. Following upon the work being undertaken by the builder, the QBSA was directed to provide a further report dealing specifically with those items in that list which the applicant considered not to have been satisfactorily rectified or completed. That report is dated 23 November, 2005 and prepared by Mr Bob Clayton. An earlier report which was directed to be prepared by the Tribunal was also prepared by Mr Bob Clayton. I am satisfied that Mr Clayton has a very good understanding of the particular issues and complaints which he has investigated over a long period of time. I have no reason to doubt or reject any of the evidence or opinions expressed by Mr Clayton. He was subject to cross-examination by both parties.
- 14 The applicant did not adduce or rely upon any expert advice at all.
- 15 I will now deal with the specific items arising from the defects list prior to the rectification work order by the Tribunal being carried out:

Item 1 – the floor is chipped in places throughout the house

- 16 The applicant's claim relates to what he says are chips or indentations in the concrete floor throughout the house. The chips relate to the concrete floor and according to the QBSA's report of the 17 March 2005 the work is satisfactory and does not require rectification. I accept the QBSA report and do not allow that item.

Item 2 – the dimmer switches in the lounge and meals area have been wired incorrectly

- 17 This complaint of the applicant relates to the manner in which a dimmer switch has been wired. It has been wired in accordance with the contractual requirements. According to the applicant he had made arrangements with the electrical contractor, who was performing work on behalf of the builder, to carry out some modifications to the wiring. That was not a matter included in the contract and I do not allow that claim. The applicant in fact said in his evidence that he was going to pay the electrician for the extra work.

Item 3 – some of the extra external light fittings have not been installed

- 18 Once again, the applicant's evidence is that he was going to pay the electrician extra for the supply of extra light fittings. That was not a contractual matter and the builder was not required to provide them and I do not allow this item. Whilst Mr Clayton said that this item falls outside the definition of "building work" he saw the

electric plan and says that wiring for light fittings was generally in accordance with those plans. I disallow this item.

Item 4 – no power points have been installed to the outside of the building

18 Once again, the applicant's evidence is that he was going to pay the electrician extra for the supply of extra light fittings. That was not a contractual matter and the builder was not required to provide them and I do not allow this item. Whilst Mr Clayton said that this item falls outside the definition of "building work" he saw the electric plan and says that wiring for light fittings was generally in accordance with those plans. I disallow this item.

19 I accept that the contract does not provide for any external power point. Again the applicant's evidence was that he had made arrangements with the electrician carrying out the work to place those power points and he was going to pay any extra money involved. I disallow this claim.

Item 5 – ceiling of the bedrooms robes, laundry cupboard and pantry have been painted incorrectly

20 The ceilings in particular in these areas have not been painted white. The applicant's case is that all ceilings had to be painted white. The builder's case was that the interior of the cupboards, etc, were not to be categorised as ceilings. I find that in accordance with the contract it was appropriate that these items be painted white as per all other ceilings. The builder conceded that the cost of carrying out the work (assuming it was done individually and without any other work at the same time) I assume was \$350.00.

Item 6 – paint work inconsistent and thin throughout the house

21 The dispute seemed to relate to whether or not a three coat painting system had been used as required by the contract. The builder argued that one sealer and two coats constituted a three coat paint system. The applicant alleged that he had been told by one of the painters that he had not been provided with full strength paint. That is clearly hearsay evidence and I am unable to accept that.

22 According to the QBSA's March 2005 report, the paint work was to industry standard except that the rear of the shelf and top edge of the internal door and top edge of the architraves were incomplete. The builder agreed to complete the work and it formed one of the items of the list of work to be completed.

23 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 7 – rough finish to door frames and skirting boards within the house

24 The builder agreed to do this item.

25 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 8 – cornice joints not consistent with other cornices

26 This is an item which the builder agreed to do.

27 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 9 – door knobs in bathroom, WC and ensuite and laundry incorrect type

28 I accept the applicant's evidence that he had not been given the correct door furniture. The cost of rectifying the door furniture, or at least of supplying the correct door furniture and having it fitted, was said to be \$100.00 and I allow that amount.

Item 10 – entry door, two garage doors and door leading to bedroom 2 do not close properly

29 The applicant agreed that those items had been rectified.

Item 11 – residue on fittings

30 This is an item which the builder was going to attend at the final hand over which has not yet happened because the applicant has refused to take possession of the house. I accept that this will be done at the appropriate time. In Mr Clayton's report of 23 November 2005, he says that this has not yet been rectified.

Item 12 – wet areas, where the skirting meets the floor, the white grout has overlapped onto the floor

31 This item was agreed by the applicants as having been rectified.

Item 13 – minor cracking in cornice etc

32 This was an item which the builder was going to rectify.

33 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 14 – dirt marks evident throughout the house

34 This was an item which the builder was going to rectify. Mr Clayton in his report of 23 November 2005 says it has not yet been done. I accept that this is something which would be done at handover time and I accept that it will be done.

Item 15 – house has not been cleaned properly

35 This was an item which the builder was going to rectify. Mr Clayton in his report of 23 November 2005 says it has not yet been done. I accept that this something which would be done at handover time and I accept that it will be done.

Item 16 – awaiting two full boxes of wet area tiles and two boxes of shower tiles to be returned

36 The builder conceded that there may be an entitlement to those tiles which he assessed at approximately \$25.00 per box. Accordingly I will allow \$100.00 for this item.

Item 17 – many of the light switch and power point covers are difficult to remove

37 The applicant agreed in his evidence that the item has been rectified.

Item 18 – applicant awaiting a quote with respect to mirrored robe doors

38 I do not understand how this item is said to constitute either a defect or incomplete work. There is no basis in the claim and I disallow this item.

Item 19 – awaiting written guarantees for products supplied

39 I accept that these documents will be provided when handover takes place and there is no basis for the claim at this stage.

Item 20 – applicant not provided with plumbing, electrical and stormwater/waste drainage plans

40 Again these are to be provided insofar as they are relevant at handover and there is no basis for this claim.

Item 21 – applicant not provided with Glass and Paint Company's advice sheets

41 Again this is item which will be attended to at handover if applicable and is not the basis for any claim and I disallow it.

Item 22 – hinges on the entry door are rough and have sharp bits sticking out

42 This item has been rectified.

Item 23 – bubbles where new concrete has been laid in the hallway and also work around skirting has been finished poorly

43 The March 2005 report indicates that this work is not defective. I accept the report and disallow the claim.

Item 24 – dent near the down light in the hallway

44 The applicant agrees that this item has been rectified.

Item 25 – bulge in the lounge on the rear wall between the two speaker points

45 The applicant agrees that this item has been rectified.

Item 26 – split joist in the oven space which has caused a large bulge to appear in the lounge

46 The March 2005 report from the QBSA indicates that there is no rectification required in respect of this alleged defect and I accept that evidence and I disallow the claim.

Item 27 – door frame around sliding door in kitchen damaged

47 The builder agreed to rectify.

48 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that the evidence and disallow that claim.

Item 28 – bottom track of the sliding door in the kitchen is damaged

49 The builder agreed to rectify.

50 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 29 – bottom end of the sliding door in the kitchen has a cover missing

51 This item has been accepted by the applicant as rectified.

Item 30 – issues relating to the island bench

52 The March 2005 report when dealing with these matters states that they do not constitute defects and I find accordingly. However, the builder agreed that he would place a blank over one of the power points under the sink. In fact I am of the view that such work is not required and is unnecessary but the builder agreed to do so.

53 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 31 – black marks on the edges of the sink

54 The applicant agreed that this has been rectified.

Item 32 – space for cook top not cut out in accordance with nominated specifications

55 The March 2005 QBSA report accepts that the work done is not defective and that no rectification work is required. The builder says that the appliance which was provided by the applicant required a cut out in the manner in which it was done. I accept the conclusions of the March 2005 report and I accept the evidence of the builder in that regard. Further, I accept that the difference in the positioning of the cook top appliance from the pantry wall is attributable to the thickness of the tiles which had to be placed on the splash back.

Item 33 – fourth cabinet from the left of the pantry is chipped

56 The applicant agreed that this has been rectified.

Item 34 – kitchen cabinet adjacent to the pantry has a badly chipped backboard

57 The applicant agreed that this has been rectified.

Item 35 – kitchen cabinet has a chipped kickboard

58 The applicant accepts that as it is, although he says it has not been rectified.

Item 36 – space below the oven is incomplete

59 The applicant says that that work has now been done except that the front template has been cut out at an angle. The March 2005 report states that the alleged defect does not constitute a building defect and is acceptable and there is no need for rectification and I accept that.

Item 37 – refrigerator space not the correct size

60 The applicant is willing to accept that situation, although attempts to reserve some rights in case there is some difficulty in the future installing a refrigerator/freezer. Nothing has come of that and at this stage, and I do not allow that claim.

Item 38 – tile adjacent to the refrigerator space has sharp edge

61 The applicant agreed that this has been rectified.

Item 39 – double power point in the kitchen has a hole near it

62 The applicant agreed that this has been rectified.

Item 40 – robe door stopper in bedrooms 1, 2 and 3 in wrong position

63 The March 2005 QBSA report does not regard this as a defect and I will not allow it.

Item 41 – robe door tracks in bedroom 1, 2 and 3 are not secured and have also been damaged

64 The applicant agreed that this has been rectified.

Item 42 – clothes rails in bedroom 1, 2 and 3 have not been fitted properly

65 The applicant agreed that this has been rectified.

Item 43 – robe in bedroom 3 is at a slant and does not close properly

66 The March 2005 QBSA report does not regard this as a defect. I accept that evidence and I disallow the claim.

Item 44 – section of the floor in bedroom 3 is uneven

67 The March 2005 QBSA report does not regard this as a defect. I accept that evidence and I disallow the claim.

Item 45 – black marks on frame of the sliding door in bedroom 1

68 The applicant agreed that this has been rectified.

Item 46 – windows in the ensuite, bedroom 1 and 2 are scratched, and have grooves left in them

69 The applicant agreed that this has been rectified.

Item 47 – long window in the ensuite does not shut properly

70 The applicant agreed that this has been rectified.

Item 48 – shower doors in the ensuite are of the wrong configuration

71 The applicant agreed that this has been rectified.

Item 49 – workmanship around light/fan heater in ensuite is poor

72 The builder agreed to rectify.

73 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 50 – toilets in ensuite and WC not as per contract

74 The builder agreed to rectify.

75 The report of Mr Clayton of 23 November 2005 says that the cisterns have been replaced but there is still an issue relating to the entire toilet suites. I agree that the whole of the toilet suites should comply, not just the cisterns. I allow this claim to complete the work.

Item 51 – vanity doors in the main bathroom and ensuite not installed properly

76 According to the March 2005 report the right hand side vanity door is in fact loose and the vanity door was misaligned and required adjustment. This was an item which the builder agreed to rectify.

77 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 52 – vanity in the main bedroom has been damaged and has holes on right hand side

78 The applicant agrees that this has been rectified.

Item 53 – neither vanity in ensuite or main bathroom have been fitted with any door or drawer handles

79 The applicant agrees that this has been rectified.

Item 54 – clips on shower door in main bathroom are wrong colour

80 The applicant agrees that this has been rectified.

Item 55 – damaged tile in the main bathroom between shower and bath

81 The applicant agrees that this has been rectified.

Item 56 – tiles on the two half walls in the main bedroom have sharp edges

82 In a report of the QBSA on the 7 October 2004 it was stated that the rectification of this item was in fact complete. However, at the hearing the builder said that the problem would be fixed at the final clean before handover and I will assume that will be the case. Accordingly, at this stage at least, I cannot and do not allow this item.

Item 57 – door in main bedroom does not have removable hinges

83 According to the report of QBSA of March 2995 the bathroom in question does not contain a W.C. and therefore does not require removable hinges. I accept that evidence and disallow that claim.

Item 58 –connector on the showerhead in main bathroom has rust on it

84 The applicant agrees that this has been rectified.

Item 59 – tap ware in the laundry sink and bath are of the wrong type

85 Whilst the applicant says that the tap ware has been changed it still does not comply with the contractual requirements in that it does not have gold trims. According to the Coral Homes Colour Selection document, which formed part of the contractual documents on page 23 thereof, the tap ware was to be chrome with gold trim and I accept that that is the case.

Item 60 – cupboard shelves in the laundry have not been installed properly

86 The applicant argues that the skirting inside the laundry cupboard is rough. The report of the QBSA of March 2005 says that there is no continuing defect and rectification has been completed. I disallow that claim.

Item 61 – tracks for sliding door in laundry have not been secured properly

87 The applicant agrees that this has been rectified.

Item 62 – in the laundry broom cupboard there are gaps between the tiling and skirting

88 The applicant agrees that this has been rectified.

Item 63 – the brickwork is inconsistent throughout the house

89 There certainly appears to have been a difficulty with the brickwork following the original construction of the house. However, rectification work was undertaken and according to a report of the QBSA of the 7 October 2004 the rectification work undertaken was complete and adequate. The applicant did not adduce any expert evidence of any nature whatsoever in these proceedings and, insofar as there is a conflict between the view expressed by the applicant and the reports of the QBSA I have no reason to reject and in fact accept the evidence of the QBSA reports in respect to such matters. Accordingly, I disallow that claim.

Item 64 – house frame does not sit flush with the edge of the slab leaving sections of the framework on an overhang

90 Again the report from the QBSA of March 2005 accepts that the complaint is not a building defect and I am satisfied that it does not constitute a breach of the contract in the circumstances, but is satisfactory. I do not allow that claim.

Item 65 – the termite strip is inconsistent throughout the house (same as Item 155)

91 This seems to be the same as Item 155. Once again there is no expert evidence to the contrary and the QBSA report dated March 2005 which says that the original problem with the termite strip has been rectified and is now complete and does not constitute a building defect. Accordingly I disallow any claim with respect to Item 65 and Item 155. However the builder did agree to attend to the removal of residue from the horizontal face.

According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 66 – soil has not been cleared to the base level of slab

92 The builder agreed to rectify.

93 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 67 – all downpipes have not been installed below the base level of the slab

94 The applicant thought that the problem could only be finally recognised after soil had been cleared to the base level of the slab and the builder's debris removed. The QBSA report of March 2005 states that it is not a defect and therefore no rectification work is required. I accept that evidence.

Item 68 – downpipe near the garage has not been directed to the front of the dwelling

95 The report from the QBSA of March 2005 states that the rectification has been completed and accordingly I do not allow this item.

Item 69 – downpipes near bedroom 2 and 3 not clamped to wall after bricks were re-laid

96 The applicant agreed that this has been rectified.

Item 70 – fire rated batts have not been installed

97 Whilst the builder concedes that the contractual requirements provided for fire rated bats because of the manner in which the house was constructed the builder argued that such items were not required. The builder conceded that the value would be somewhere in vicinity of \$173.00 for the bats not provided and I allow a sum of \$173.00 in favour of the applicant.

Item 71 – applicant paid extra for "special" trusses, which were never installed in correct position

98 Applicant claims to have paid extra money for special trusses which were never installed. The builder gave evidence to the effect that the trusses which were required to be strengthened were in fact strengthened. The report of the QBSA of March 2005 says that strengthened trusses have been installed below the solar water unit as required. I accept that evidence. The evidence of the applicant is inadequate for me to conclude otherwise. Accordingly I disallow that claim.

Item 72 – stormwater gullies damaged or covered with soil

99 There seems little dispute that the stormwater gullies were not required to be provided by the builder as part of the contractual obligations but were installed by the applicant or his contractors. I do not allow this claim.

Item 73 – stormwater outlets to main road damaged

100 The report of the QBSA of March 2005 said that rectification is required to the western side only.

101 According to Mr Clayton's report of 23rd November 2005 this is still not complete. I allow this item of the claim.

Item 74 – Garage roller door does not function properly

102 The applicant in his defects list, as at the 18 January 2005, says that this item has been rectified, although he is still awaiting the receipt of an instruction manual. I do not allow this item.

Item 75 – Garage roller door does not sit flush with the floor leaving gap

103 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 76 – gaps on inside of roller door on both sides of upper part of frame

104 The builder agreed to rectify.

105 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 77 – floor slopes towards the back of the garage

106 The report of the QBSA of March 2005 accepts that there is no defect in that regard and no rectification is required and I disallow that claim.

Item 78 – side garage door not correct type

107 The applicant seems to concede that the door which has been fitted complies with the requirements of contract, but gave evidence to the effect that he had asked for a variation for the fitting of a different sort of door and was told by a representative of the builder that he should not worry and that a door would be provided, apparently free of charge. The applicant says that never happened. Whilst that may well be the case, it seems to me that it is not an enforceable promise as there is no obvious consideration passing for it and I cannot allow that claim.

Item 79 – external tap on garage wall requires back plate and is too close to wall

108 The applicant agrees that this has been rectified.

Item 80 – tap near kitchen wall that used to drip, tightened so it cannot be opened

109 The applicant agrees that this has been rectified.

Item 81 – three external taps not fitted with vacuum breaker valves

110 The applicant agrees that this has been rectified.

Item 82 – gas regulator is not installed for 45 kg and 9 kg gas bottles

111 It is the builder's case that the regulators are fitted when the gas appliances are installed and that at this stage the applicant has not supplied the gas appliances. The builder said that the regulators will be fitted when the appliances are supplied and I accept that evidence and I do not allow this claim.

Item 83 – Gas point in patio area has been bent into place

112 The QBSA report of March 2005 states that no rectification is required unless so ordered by the Tribunal. That would depend upon the contractual obligations of the builder, as the QBSA do not seem to regard the problem as constituting a building defect. Photos of the bent pipe were in the evidence and attached to the submissions of the 25 October 2004 of the applicant. It seems to me that the work associated with the pipe is less than satisfactory and I allow that item. Once again there is little evidence as to what the cost there will be and doing the best I can I will allow a figure of \$100.00 to rectify that.

Item 84 – light near laundry door not centred

113 The applicant agreed that this has been rectified.

Item 85 – workmanship on laundry waste pipe outlet is poor

114 The builder agreed to rectify.

115 The report from Mr Clayton of 23rd November 2005 says that this is incomplete. I allow this claim.

Item 86 – sewerage overflow near laundry has not been installed properly

116 The QBSA report of March 2005 says that this particular item does not constitute a defect and that no rectification is required and I do not allow this claim.

Item 87 – air vent on roof is wrong colour

117 The applicant agrees that this has been rectified.

Item 88 – roof tile under the air vent not painted

118 The applicant agrees that this has been rectified.

Item 89 – edge of roof tiles above garage not painted

119 Whilst the applicant says it has not been rectified he is willing to accept the matter as it is.

Item 90 – section of roof above ensuite has sagged, and roof tiles now lifted

120 The builder agreed to rectify.

121 The report from Mr Clayton of 23rd November 2005 says that this is incomplete. I allow this claim.

Item 91 – gutter near the ensuite has a nail protruding out of it

122 The applicant agrees that this has been rectified.

Item 92 – black panels covering bay window configuration has not been capped (same as 173)

123 This seems to be the same as item 173. Insofar as the defect constitutes a building defect the QBSA report of the 7 October 2004 accepts that any rectification required to be undertaken in that regard, has been completed.

124 The applicant, however, argues that in accordance with the provisions of section 89 of the *Domestic Building Contracts Act 2000* insofar as the builder had provided a display home that the subject home should conform to the same standard as the display home. I accept, however, that the evidence of the builder insofar as there is any difference at all, it is minimal and of no real consequence and that the house as constructed insofar as it has to be of the same standard as the display home achieves that result. Further, section 89 does not purport to imply any warranties or terms into the contract. Failure to comply with its provisions may render the builder liable to a penalty. I disallow this claim.

Item 93 – absence of Hardiflex cladding above garage and on gable and bay windows

125 The contents of the New Home Tender which forms part of the contractual documents, provides as follows:

"Provided gable end to front elevation of study including painted Hardiflex cladding in lieu of existing hip roof."

126 The builder's argument is that the contractual obligations as contained in the contractual documents have been complied and I accept that that is the case. I disallow that claim.

Item 94 – gable vent has not been positioned correctly and needs repainting

127 I accept that the gable vent has been positioned correctly in accordance with the contractual documents and the plans forming part thereof and I disallow this claim.

Item 95 – electric box has been positioned at an angle

128 The applicant agrees that this has been rectified.

Item 96 – earth wire not positioned below electric box

129 The applicant said that he had agreed with the site supervisor that the earth wire was to be positioned under the metre box because he wanted the fence to be positioned where the earth wire in fact has been placed. Again, even if some variation to the plans was alleged to have been entered into, there seems to me to be no consideration for such promise and thus it is unenforceable. I do not allow this claim. The QBSA report of March 2005 says that this is not a defect.

Item 97 – the house has not been completed within the agreed building period

130 I will deal with this item later in this decision.

Item 98 – documents not provided

131 I accept that any plans or documents which have to be provided to the applicant will be provided when the handover takes place.

Item 99 – failure to provide an estimate of completion date

132 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 100 – allegations of being misled

133 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 101 – harassment by bricklayers of children

134 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 102 – failure to supervise construction work

135 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 103 – employing bullying tactics

136 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 104 – alleged failures by Paul Sweeney the Managing Director to fail to address certain complaints

137 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 105 – Coral Homes misleads customers

138 This complaint does not constitute any defect or incomplete work or is the basis of any claim for damages.

Item 106 – no item

139 There is no item 106 in the list of defects.

Item 107 – boxing above garage door has varying gaps and is inconsistent, and obstructs opening of the garage roller door

140 The builder agreed to rectify.

141 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 108 – electric box not fitted properly

142 The applicant agreed that this has been rectified.

Item 109 – above ensuite window, gap between fascia and brickwork

143 The applicant agreed that this has been rectified.

Item 110 – ensuite windows should not have frosted glass

144 The applicant agreed that this has been rectified.

Item 111 – shower doors in ensuite are wrong configuration

145 The applicant agreed that this has been rectified.

Item 112 – laundry door is warped

146 According to the report of the QBSA of March 2005 the rectification of any defect with respect to that door has been completed and I do not allow that claim.

Item 113 – clips on down pipes are not consistent

147 The builder agreed to rectify.

148 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 114 – tap on the rear wall drips (same as 171)

149 This is the same as Item 171. When the QBSA carried out an inspection on the 17 March 2005 it was noted that the tap was not leaking and could be turned off without the need to use excessive force. I do not accept this as a defect and I do not allow those items.

Item 115 – water drips continually from solar hot water overflow pipe

150 According to the report of the QBSA of the 17 March 2005 this does not constitute a defect and no rectification is required and, therefore, I do not allow it.

Item 116 – many parts of the walls throughout the house are rough

151 The QBSA in their report of March 2005 state that this does not constitute a defect and no rectification is required and I do not allow it.

Item 117 – windows have too much play in them closed

152 The QBSA in their report of March 2005 state that this does not constitute a defect and does not require rectification and I do not allow the claim.

Item 118 – woodwork in the walk-in-robe in bedroom 2, bedroom 3, pantry and laundry rough and not properly painted

153 The report of the QBSA of March 2005 accepts that this is not a defect and no rectification work is required and accordingly I do not allow it.

Item 119 – lock on external laundry door is of the wrong type (same as Item 127)

154 This seems to be much the same as item 127. The builder agreed to rectify this item but it is not one which Mr Clayton reviewed in his report of 23rd November 2005. I allow this claim

Item 120 – workmanship on base frame external laundry door is shoddy

155 In the report of the QBSA of March 2005 it is said that this is not a defect. Accordingly I find there is no defect and I disallow this claim.

Item 121 – frame work around glass on external laundry door is rough

156 The applicant agreed that this has been rectified.

Item 122 – internal laundry door frame is damaged in two places, one near hinges in inside towards wall

157 The applicant agreed that this has been rectified.

Item 123 – internal laundry door has not been painted properly

158 The applicant agreed that this has been rectified.

Item 124 – robe door in bedroom 2 is at a slant and does not close properly

159 The applicant agreed that this has been rectified.

Item 125 – piece of wood stuck under skirting near W.C. and also near main bathroom door

160 The applicant agreed that this has been rectified.

Item 126 – two holes on left side of main bathroom window

161 The applicant agreed that this has been rectified.

Item 127 – lock on garage/lounge door is wrong type

162 Same as Item 119. The builder will rectify. I have allowed the claim under Item 119.

Item 128 – pantry does not open or shut properly

163 According to the report of the QBSA of March 2005 this alleged problems does not constitute a defect and no rectification work is required.

ITEM 129 – weephole covers from some of the windows are missing

164 The applicant agrees that this is rectified.

Item 130 – boxing around space below the oven is not consistent and appears to be at an angle (same as Item 36)

165 The report of the QBSA of March 2005 accepts that the allegation contained in this item does not amount to a defect and no rectification is required and I do not allow that claim.

Item 131 – pipe work around solar hot water system not sealed

166 The applicant agreed that this has been rectified.

Item 132 – site has not been properly cleared

167 The builder says that this is an item that will be attended to prior to handover and I accept that. It is noted by the QBSA in their report of the 7 October 2004 that this is a matter which needs to be attended to.

Item 133 – cracks on external wood work throughout the house

168 The builder agreed to rectify.

169 The QBSA report of March 2005 says rectification is required. The report of Mr Clayton of 23 November 2005 says it has not been carried out. I will allow this claim.

Item 134 – water pipe in patio does not have a covering around it

170 In the course of the evidence, the applicant accepted that this was no longer an issue.

Item 135 – gaps between guttering and fascias in various areas throughout building

171 The builder agreed to rectify.

172 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 136 – box soffit sheets on outer side of piers not flush with fascia or brickwork and there are holes at both ends

173 In the report of the QBSA of March 2005 it is noted that the gables are flush with brick work and that there are no holes evident in the gables or the soffit. The QBSA do not regard the complaint as a defect or something which requires completion and accordingly I do not allow it.

Item 137 – slab in front of garage is short and not as per the display house

174 The evidence of the builder was that the garage and slab associated thereto had been constructed in accordance with the drawings on Sheet 5 of 8 which formed part of the contractual documents. There was no expert evidence called by the applicant. In his material, the applicant says that the manner in which the slab has been constructed is a failure on the part of the contractor to meet a reasonable standard of construction and finish.

175 I am satisfied that the item does not constitute a defect and indeed and is constructed in accordance with the contractual obligations of the builder. Insofar as the item is different to the display house I accept that any difference is minimal and of no consequence. I accept that there is substantial compliance with the display house.

Item 138 – cracked roof tile

176 The builder agreed to rectify.

177 According to the report of Mr Clayton of 23 November 2005 this has not been fixed. I allow this claim.

Item 139 – left hand side storm water outlet to main road seriously damaged

178 The applicant agrees that this has been rectified.

Item 140 – storm water outlet at curb (same as Item 73)

179 The builder agreed to rectify.

180 The work has not been done.

181 This is the same as item 73 I have allowed the claim under that item.

Item 141 – sewerage outlet cover/casing at front of property damaged during course of other rectification and needs to be replaced

182 The applicant agrees that this has been rectified.

Item 142 – garage roller door overhangs slab at varying lengths and does not sit comfortably on garage slab

183 I am not satisfied that this constitutes a defect or a failure to comply with the contractual obligations and I disallow the claim.

Item 143 – black mark on top of garage roller door where rubbing (same as Item 107)

184 The builder agreed to rectify.

185 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 144 – inconsistent gap above and around edge of the garage roller door, at top right hand corner piece of wood sticking out which impedes function of door

186 The report from the QBSA of March 2005 states that there is no defect in respect of this item and that no rectification is required and I accept that evidence.

Item 145 – woodwork inside boxing above garage door not new (same as 146)

187 The builder will rectify in accordance with the report of the QBSA.

188 As with Item 146 the applicant told Mr Clayton that he now accepts this item.

Item 146 – (same as Item 145)

189 The builder will rectify in accordance with the report of the QBSA.

190 As with Item 145 the applicant told Mr Clayton that he now accepts this item.

Item 147 – concrete build up behind some down pipes encroaches onto termite strip and prevents detection of termites in those areas

191 The builder agreed to rectify.

192 This will be done prior to hand over. I do not allow this claim.

Item 148 – protective box covering telephone no fixed and hole below

193 The report of the QBSA of March 2005 does not consider this to be a defect and I do not allow it.

Item 149 – various problems with windows (glass and framework)

194 The builder agreed to rectify.

195 This is a matter which will be dealt with prior to hand over. I do not accept that any issue arises as to whether or not the materials can be described as new given the time since construction. For the reasons I will deal with later I do not think that the applicant has in all the circumstances been entitled to refuse to complete and take possession.

Item 150 – concrete build up on side garage door and door frame

196 The applicant agrees that this has been rectified.

Item 151 – side garage door not properly installed

Item 152 – back plates on all external water taps missing

198 The report of the QBSA of March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 153 – lights/fan/heater in ensuite have been removed without permission and heat bulbs and fascia to unit missing

199 The applicant admits that the unit has been returned but insists that a new unit be installed. The QBSA report of the 17 March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 154 – various problems with ensuite and main toilets

200 The builder agreed to rectify.

201 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 155 – (same as Item 65)

202 Relates to item 65. The builder agreed to rectify.

203 I have allowed this claim under Item 65.

Item 156 – internal wall cavity between the brick work and the frame is now inconsistent and not as per the plans same as Item 63)

204 Relates to item 63. Because of earlier defects in the brickwork, it was necessary for extra and additional work to be carried out by the builder which has in fact been done. The applicant argues that the builder in an effort to push the brickwork in closer to the frame has caused inconsistencies in the wall cavity ranging from between 20 mm to 70 mm whereas the cavity should have been 50 mm. The applicant also has issues concerning the termite barrier.

205 The applicant has not adduced any expert evidence at all in respect of this item.

206 According to the report of the QBSA of March 2005 the work in respect of the brickwork is complete and satisfactory and no remedial work is required with respect to this item. Accordingly I do not allow this claim.

Item 157 – the size and physical dimensions of the soffit woodwork differ throughout the house

207 The builder agreed to rectify the defect in accordance with QBSA direction.

208 Mr Clayton says that the applicant now accepts this item. The applicant denies this. The evidence on this issue is not very satisfactory. Has the work been completed? Mr Clayton does not say one way or the other. Clearly some work was required. I cannot be satisfied that it is done. I will allow this claim.

Item 158 – paint residue along soffits

209 The builder agreed to rectify.

210 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 159 – soffits need replacing

211 The report of the QBSA of March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 160 – excess mortar in wall frame cavity

212 I am not satisfied on the evidence that there is any problem in this regard as alleged by the applicant. No expert evidence was produced by the applicant to establish the problem at all or to establish what the effect would be in any event. I disallow this claim.

Item 161 – gap on left hand side of ensuite window

213 The report of the QBSA of March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 162 – workmanship around waste pipe outlet outside laundry and unworkmanlike (same as Items 85, 86 and 163)

214 Apparently this item is similar to that addressed in items 85 and 86 and the report of the QBSA of March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 163 – workmanship around sewerage overflow is poor and unworkmanlike (same as Items 85, 86 and 162)

215 Apparently this item is similar to that addressed in item 162 and items 85 and 86. The report of the QBSA of March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 164 – problems associated with the positioning of downpipes

216 Insofar as there was damage to the base of a downpipe the builder agreed to repair that damage.

217 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 165 – leaking downpipes

218 The report of the QBSA of the March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 166 – failure to use temporary downpipes

219 The applicant complains that the builder did not use temporary downpipes during the course of the construction contrary to the builder's contractual obligations. The applicant argues now that the downpipes throughout the house are dirty and have marks on them and have deteriorated.

220 Of course, a lot of this issue has arisen because of the fact that the applicant has refused to take possession of the house or complete the contract because of the alleged defects. I will deal with that matter later.

221 However, I am satisfied that this is an item which will be attended by the builder at the final clean prior to handover of the house. I disallow the claim.

Item 167 – downpipes attached to garage piers and termite boarder inconsistent

222 The report of the QBSA of March 2005 accepts that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 168 – build up of debris on site

223 Builder will do clean up of the site prior to handover.

Item 169 – black plastic covering used to prepare house foundations not laid properly thus slabs are not formed properly and concrete did not set into full thickness of mould casing

224 The applicant adduced no expert evidence in this regard. The report of the QBSA of March 2005 says that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 170 – irregular salty residue built up above some window and door lintels, and in various places around termite border

225 The applicant agrees that this has been rectified.

Item 171 – water tap on rear wall drips

226 This item has been dealt with previously at item 114 and for the same reason I disallow the claim.

Item 172 – no bayonet gas fitting for BBQ point

227 This seems to be similar to and if not identical with item 82. The builder has agreed to complete the installation of the necessary hardware for the gas fittings when the appliances are provided.

Item 173 – wood stuck above metal flashing in bay window looks odd and is not per plan (same as Item 92)

228 The builder says that this is the same item as item 92. I accept the version of the builder with respect to that issue as I did for item 92 and I do not allow this claim.

Item 174 – solar hot water overflow drain is damaged and blocked

229 The builder agreed to rectify.

230 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 175 – copper work connected to hot water system sticks out too far

231 The builder agreed to rectify.

232 The applicant advised Mr Clayton that he now accepts the item.

Item 176 – gas pipe outside study hazardous does not have protecting cover

233 The builder will attend to this item when the gas appliances have been provided and I do not allow anything for this item.

Item 177 – removal of builder's tools and equipment

234 The applicant accepts this as rectified.

Item 178 – gutters and fascias throughout the house scratched and have splashes of paint on them (same as Item 133)

235 The builder agreed to rectify.

236 This has not been completed but I allowed the item at item 138.

Item 179 – cracks in external woodwork as a result of the house not being maintained for 18 months (same as Item 133)

237 The builder agreed to rectify.

238 This has not been done. I have allowed this claim at item 133.

Item 180 – door frame around entrance door is damaged and has concrete on it

239 The applicant accepts this as rectified.

Item 181 – sawdust dirt and other rubble under bath

240 There is no expert evidence on behalf of the applicant that there is any real issue related to the presence of dirt and rubble under the bath or that it has any effect at all on the building. I am not satisfied that it is a breach of contract or a defect and I do not allow this claim.

Item 182 – sediment and other building debris overflowing onto the road as a result of the builder's failure to abide by environmental building regulations

241 The report of the QBSA of March 2005 says that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 183 – the builder failed to display their company sign for a period of 12 months

242 There is no basis for this claim at all and it does not constitute a building defect, incomplete work or a breach of contract.

Item 184 – study door does not shut properly

243 The builder agreed to rectify.

244 The applicant told Mr Clayton that he now accepts this item.

Item 185 – external entry door frame has chipped

245 The builder agreed to rectify.

246 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 186 – metal corner strip on right hand dwarf wall sticks out.

247 The report of the QBSA of March 2005 says that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 187 – middle edge of island bench carcass sticks out and is not butted together properly

248 The builder agreed to rectify.

249 The applicant has advised Mr Clayton that he now accepts this item

Item 188 – left hand door of island bench is misaligned

250 The builder agreed to rectify.

251 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 189 – island bench top not fitted properly to fit with carcass (same as Item 194)

252 This is the same as Item 194. The builder agreed to rectify.

253 The applicant advised Mr Clayton that he now accepts this item.

Item 190 – right and left hand sides of island bench do not sit flush with kitchen floor and are suspended in the air. Packing bits need to be removed

254 The report of the QBSA of March 2005 says that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 191 – laminex cover on corner of island bench no properly cut

255 The report of the QBSA of March 2005 says that there is no defect with respect to this item and no rectification work is required and I do not allow this claim.

Item 192 – two power points under island bench when there should only be one (same as Item 30(vi))

256 This is the same as item 30(vi) and the builder will place a face plate on one of the power points. Why there can be complaint about the presence of two power points when there should only be one has me a little bit baffled, but in any event the builder is willing to do that.

Item 193 – poor workmanship along left hand side of left bay window

257 The builder agreed to rectify.

258 This will be attended to on hand over.

Item 194 – bench top with cut out not properly fitted to carcass (same as Item 189)

259 This is the same as item 189. The builder agreed to rectify.

260 The applicant advises Mr Clayton that he now accepts this item.

Item 195 – floor drain in laundry has concrete stuck in it

261 The builder agreed to rectify.

262 The applicant advises Mr Clayton that he now accepts this item.

Item 196 – light does not work in walk in robe and requires new bulb

263 The report of the QBSA of March 2005 says that there is no defect with respect to this item and no rectification work is required and I do not allow this claim. The provision of a new bulb seems to me to be fairly within the ambit of the responsibility of the applicant given the time that the house has been constructed and the failure to complete the contract or take possession at least from the time that the brick work defects were attended to by the builder.

Item 197 – white paint from cornices dripped on walls in bedroom 1

264 The builder agreed to rectify.

265 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 198 – brown marks on bulb and fascia of light/fan heater

266 The builder agreed to rectify.

267 The applicant advised Mr Clayton that he now accepts this item.

Item 199 – gold shower head connector in ensuite has rust

268 The builder agreed to rectify.

269 This has not been done. I am satisfied that it will be attended to prior to hand over.

Item 200 – right hand side of shower frame in ensuite not properly secured and not sealed with silicone

270 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 201 – window glass in bedroom 2 is chipped and scratched

271 The builder agreed to rectify.

272 The applicant advised Mr Clayton that he now accepts this item.

Item 202 – lump of concrete stuck inside the window frame opening in bedroom 3

273 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 203 – top left hand corner of window frame in bedroom 3 bent and snapped in

274 The builder agreed to rectify.

275 The applicant advised Mr Clayton that he now accepts this item.

Item 204 – main ensuite toilets do not flush properly

276 According to the report from the QBSA of March 2005 both of the toilets flushed properly on both half and full flushes. The QBSA did not regard the problem as in any way constituting a defect however, as previously stated the builder was going to replace both of the toilets in any event.

Item 205 – main bedroom middle vanity draw falls off its rails when fully opened

277 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 206 – main bedroom hole around base of vanity pipe to large

278 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 207 – gap under lip of bath needs silicone sealing

279 The builder agreed to rectify.

280 The applicant advised Mr Clayton that he now accepts this item.

Item 208 – many spout holes on shower head blocked with grit and grime

281 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 209 – shower doors in main bedroom do not operate properly

282 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 210 – no support under silver base of shower doors in main bedroom

283 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 211 – floor drain covers in main bedroom shower badly scratched

284 The builder agreed to rectify.

285 The report of Mr Clayton of 23 November 2005 says that some of the work has been done but not all. The grate to the shower enclosure is still scratched. I allow this claim.

Item 212 – gap in tiling alongside of bath

286 The builder agreed to rectify.

287 This is not complete. A small opening still requires fixing. I will allow this claim.

Item 213 – paint on inside of power point cover at rear of garage wall

288 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 214 – when it rains water leaks into the garage around the side garage door and along the skirting

289 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 215 – poor workmanship above garage roller door at each corner (same as Items 76, 137 and 216)

290 This seems to be the same sort of issue addressed in item 76 and item 137 and I will not consider it again.

291 These items have been rectified.

Item 216 – (same as items 76, 137 and 215)

292 This seems to be the same item as considered in items 76, 137 and 215 and I will not consider it again.

293 These items have been rectified.

Item 217 – skirting in garage not painted correct colour

294 The builder agreed to rectify.

295 This has not been rectified. I will allow this claim.

Item 218 – skirting near garage/hallway door has not been butted together properly

296 The builder agreed to rectify.

297 This has not been rectified. I will allow this claim.

Item 219 – crack above garage roller door

298 The builder agreed to rectify.

299 The applicant advised Mr Clayton that he now accepts this item.

Item 220 – back section of garage roller door bent in several places

300 The builder agreed to rectify.

301 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 221 – number of defects with electric box

302 The builder agreed to rectify.

303 Mr Clayton in his report of 23 November 2005 says that a closing bracket is still damaged and the paint finish is not satisfactory. I will allow this claim.

Item 222 – covering at the bottom of the right hand garage downpipe wrong colour

304 The builder agreed to rectify.

305 The applicant advised Mr Clayton that he now accepts this item.

Item 223 – plastic covering of bottom of laundry downpipe damaged (same as Item 164)

306 This seems to relate to the same sort of item as item 164 and the builder agreed to rectify. I have dealt with it under item 164.

Item 224 – metal flashing in bay window dented (same as Item 225)

307 The builder will rectify.

308 This is will attended to prior to hand over

Item 225 – metal flashing in bay window needs to be cleaned and has streaks of silicone wiped off (same as Item 224)

309 The builder agreed to rectify.

310 This will be attended to prior to hand over.

Item 226 – woodwork above each of the external doors differs and is inconsistent

311 The builder agreed to rectify that defect in accordance with the QBSA report of 17 March 2005 in that regard.

312 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 227 – solar hot water overflow pipe is corroded

313 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 228 – louver vent above study gable is dirty

314 The builder agreed to rectify.

315 This has not been done. It is to be done before hand over.

Item 229 – lintels above the doors are irregular and protrude at different angles

Item 230 – not all lintels around house properly painted

317 The builder agreed to rectify.

318 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 231 – concrete base protruding from garage is rough and needs to be levelled properly

319 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 232 – concrete floor near garage roller door not angled at right gradient

320 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 233 – the garage is short and is not as per plans (same as Item 137)

321 This seems to relate to at least the same sort of issues as item 137.

322 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required. Further, there is no expert evidence adduced by the applicant in this regard.

Item 234 – tie rods inside brick piers are bent and not centred

323 There seems no doubt that rods were in place but the applicant's issue was that they should have been centred in the brick piers.

324 There is no evidence adduced on behalf of the applicant that there is any defect arising from that placement and accordingly I do not find that there is defective building work nor is it in breach of the contract.

325 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 235 – inside of brick piers filled with brick when they should have been grout filled

326 When photographs were taken of the complaint the piers had only been half built. There is no expert evidence suggesting that there was any defect in this building method and accordingly I cannot be satisfied on the onus that there is any defect or breach of contract in that regard.

Item 236 – gutters overflow during heavy downpour

327 The QBSA report of March 2005 does not consider this to constitute any defect but in fact considers that the evidence that the rain overflows indicates that the overflow splitter slots in the gutters are performing as they are intended to.

Item 237 – too much gap between the side garage door and frame

328 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 238 – paint on the rubber lip of the entry door and side garage door

329 The builder agreed to rectify.

330 This has not been done. This will be attended to before hand over.

Item 239 – woodwork above window frames and internal doors not properly painted (same as Item 6)

331 The builder agreed to rectify. This is dealt with under item 6

Item 240 – lump on concrete stuck on back door knob. Door knob tarnished and needs to be replaced

332 The builder agreed to rectify.

333 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 241 – paint marks evident around edges of window frame in study

334 The builder agreed to rectify.

335 This has not been done. This will be attended to before hand over.

Item 242 – hinges and door plate on study door have marks on them (same as Item 243)

336 The builder agreed to rectify.

337 This has not been done. This will be attended to prior to hand over.

Item 243 – marks on study door knob and toilet door knob (same as Item 242)

338 The builder agreed to rectify. I have dealt with this under item 24.

Item 244 – paint from walls overlaps on to architraves when woodwork throughout house should be painted different colour

339 The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 245 – paint on floor throughout house needs to be removed

340 This painted floor that is being referred to is in fact the concrete slab on which no doubt there will be floor coverings. The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 246 – gold fittings on tap ware throughout the house tarnished and deteriorated and needs to be replaced

341 The builder agreed to rectify.

342 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 247 – two smoke detectors installed in the house make beeping noises

343 This would seem to arise by reason of the fact that the batteries therein are flat and need to be replaced. This has no doubt occurred because of the delay in the applicant taking possession. I do not accept that this is a defect or a breach of contract. The QBSA report of the March 2005 accepts that there is no defect in respect of the complaint and there is no rectification required.

Item 248 – insects both alive and dead need to be removed

344 The builder agreed to rectify.

345 According to the report of Mr Clayton of 23 November 2005 this work has been completed satisfactorily. I accept that evidence and disallow that claim.

Item 249 – various defects

346 In item 249 a total of items (a) to (y) included. I will not set them out in detail.

347 (a), (b), (c) and (f) – I accept that there are no defects, nor breach of contract.

348 With respect to all of the other items in the sub-items of item 249 the builder will rectify.

349 According to the report of Mr Clayton of 23rd November 2005 all the items either were fixed or were not defects except for: "Item 249(j) and (y), dealing with residue on items. I am satisfied that this will be attended to prior to hand over."

Items 250 to 256 – various breaches and termite treatment

350 These are matters which do not and cannot constitute defective building work, incomplete building work or breaches of contract and accordingly I dismiss any claim in relation to those.

Item 257 – breach of contract

351 The applicant argues that Coral Homes have breached the contract over two years by stopping him from having access to the building while the house was under construction. I am not satisfied that indeed there has been any such breach as the applicant has failed to complete the contract and make the final payment due there-under. I will return to that matter later.

352 I have thus dealt with all of those matters which are in dispute between the parties.

353 Issues have arisen in addition to the items I have dealt with above dealing with a claim for interest by the builder in respect of the failure of the applicant to make the final payment under the contract.

354 For his part, the applicant is seeking damages relating to delay in the completion of the construction work by the builder.

- 355 I am satisfied, that there certainly was some delay and a need for rectification work of a fairly significant nature to be undertaken by the builder particularly relating to the brick work and similar items in the house. However, it would seem that that work was completed in or about February 2003 and thereafter the issues, to which I have referred in this decision, have been the reasons why unhappiness has existed between the parties and why the applicant has failed to pay the balance of the purchase price and take possession of the property.
- 356 I am not satisfied that given due regard to the contract, that the items which I have found constituting defects or breaches of contract in this decision are sufficient to warrant the applicant from completing the contract. It seems to me that many of the items were of a minor nature and a large number of them, indeed, related to matters which the builder would have attended to prior to the time of handover in the normal course of events.
- 357 In the circumstances, I am not willing to grant any damages to the applicant by reason of any delay in the handing over possession or completion of the construction work.

Quantum of the Applicant's Claim

- 358 Having regard to the items I have allowed in favour of the applicant it is necessary to place some cost on them. I do not accept that each individual item can be assessed separately because tradesman attending to certain of the repairs will also be able to do others at the same time. Both the parties have submitted evidence or at least submissions as to what that amounts should be. However, due to my findings those can only be a guide at best. With respect to some of the claims I have already in the body of this decision ascribed a value. I will have to calculate a value for the remainder. The fixed values I have referred to seem to be about \$923.00. Allowing for the reasonable costs of supplying labour and materials for the other allowed items, not including those items I have stated will be attended to prior to hand over, I think that an amount of \$3,500.00. Accordingly I allow a total of \$4,423.00 on the applicant's claim
- 359 As there is no evidence that the applicant has in fact incurred any costs associated with the claim until this time I do not allow interest.
- 360 I allow the respondent's counterclaim in the sum \$10,668.00. Allowing for the applicant's claim I order that the applicant pay to the respondent the sum of \$6,245.00. I order that interest at a rate of 10% per annum also be paid on that amount calculated for a period of two years. That allows for a period after the builders allegation of practical completion for the brickwork issues to be resolved. Interest in \$1,249.00.

Order

- 361 Accordingly, I order that the applicant pay to the respondent the sum of \$7,494.00 within 30 days of the date of the communication of this decision to the applicant.

Costs

- 362 Neither party was represented. Neither relied upon expert evidence. Having regard to the provisions of 70 and 71 of the *Commercial and Consumer Act 2003* there is no basis for any order as to costs.