

Turner and Perth Block & Bricklaying Pty Ltd [2022] WASAT 7

FACTS

The case of *Turner and Perth Block & Bricklaying Pty Ltd [2022] WASAT 7* involved a dispute between the homeowners (**the Turners**) and a builder, Perth Block & Bricklaying Pty Ltd (**the Builder**), who was engaged to build a garage containing a mechanic's car lift.

The Builder constructed the building with several deviations from the design including additional support and thickness added to the floor slab, to support the car lift.

The garage was designed to be built on sloping land, with the North wall acting partially as a retaining wall with no waterproofing, which later exhibited inevitable water infiltration.

The Builder built this North wall in accordance with the specifications in the approved design and did not raise the issue of a lack of waterproofing during construction.

ISSUE

One of the issues considered by the tribunal was what design responsibility did the Builder bear for the water infiltration.

FINDING

The tribunal found that the Builder was at least partially responsible for the deficient design of the retaining wall, stating:

“[149] *Liability for the inadequate waterproofing of the retaining wall is shared since Mr Pearce [The Engineer] who should have visited the site and should have designed the wall consistently with a wall that retains soil; whilst the respondent should have known, as a competent builder would, that a wall that retains soil as this wall does, requires waterproofing.*”

IMPACT

The decision in this matter shows how builders who take no part in the design process may still be responsible for defects in the design, if the defects are such that any competent builder should have recognised the defective design.