

Claims of hundreds of 'slab heave' cases

One of Australia's largest home builders, Metricon, recently failed in its bid to overturn a VCAT damages award of in excess of \$280,000 against it over damage to a Tarneit house from a poorly constructed concrete slab.

On appeal Metricon had argued that VCAT had no evidentiary basis for its ruling.

While the court found that the tribunal had erred when it ruled that Metricon had breached the Building Code of Australia in the way it had constructed the slab, this did **not** detract from the tribunal's overall ruling.

The court ruled that the tribunal's award of damages was also correct.

To recap, Metricon appealed to the Supreme Court after losing at VCAT. This was a matter involved a home owner, Graham Hooper and is one of a number of actions brought against this builder for slab heave, where soil movement under poorly built homes causes significant structural damage.

Worse for those in the building industry, are claims that hundreds of home owners could be affected. Consequently, these decisions are being examined with great interest.

Metricon were found to have knowingly proceeded with the construction of the house despite receiving complaints that the home's slab was built on poorly compacted soil.

A short summary of the facts

In 2006 as the home was being constructed, Hooper and his surveyors found that the slab was built to an incorrect height. Rather than restarting construction, Metricon agreed to deduct \$7,500 from the house price and import soil after completion to level the external landscape.

In October 2007, within two months of moving into the house, Hooper noticed cracks which became more severe in the following year, and his front bedroom window became jammed and Hooper was unable to open it. He complained to the builders, who refitted some windows and replastered some walls.

The tribunal heard that after moving interstate for work in 2009, Hooper received complaints from tenants about further cracking and the front door jamming. Metricon adjusted the front door once and Hooper told the tribunal that he paid for a carpenter to repair the home several times.

Meanwhile the problems continued to increase, with windows jamming shut and more cracks appearing.

Later in 2009, Metricon wrote to Hooper telling him that the problems were due to “edge heave”, which it claimed was not its fault but due to Hooper’s own landscaping and to “excessive garden watering.”

In 2011, Hooper decided to bring in an independent building and engineering expert, who concluded that the slab had skewed, the soil underneath was improperly compacted and the house would continue to move. The expert also concluded that it would be cheaper to demolish the house and rebuild it rather than repair it.

How could this happen?

The issues are complex but essentially it is a combination of the following:

- Consumers demanding larger houses and better finishes for less money.
- Suppliers competing to provide more services for less return.
- The reality that earthwork’s testing does not identify every problem on a site which leaves houses at risk.
- In a cost saving endeavour, builders are using cheaper construction professionals and strong-arming suppliers into providing unsatisfactory designs.

Builders should be preventative

Apart from reviewing the quality of contractors and sub-contractors and undertaking thorough building inspections, builders should advise home owners in writing about the importance of soil moisture maintenance as well as creating an awareness of acceptable cracking limits in brickwork and plasterboard walls.

Builders need to be aware and take note that it is nearly impossible to protect some slab systems against uneven soil moisture conditions, particularly in highly reactive clay sites. A failure of the soil moisture maintenance system, even if it is within the homeowner’s care, will not necessarily void the builder’s responsibility for maintenance and/or replacement of the building, particularly those builders offering long 25 year warranties.

If you or someone you know wants more information or needs help or advice, please contact us on 1800 888 783 or email doyles@doylesconstructionlawyers.com.