

VICTORIA LAW SCHOOL
Junior Moot

Date: 10th March 2020

MEMORANDUM FOR CLAIMANT

On Behalf of:

Charcoal Architecture Pty Ltd
(Claimant)

Against:

Tiling Matters Pty Ltd
(Respondent)

TEAM: X & Y

TABLE OF CONTENTS

TABLE OF CONTENTS	1
1. <u>‘Contractual Breach of Respondent’</u>	2
1.1. <i>‘Because of contractual intentions to tile the entire reception area’</i>	2
1.1.1 Case Authorities	2
<i>Conclusion 1</i>	2
1: <u>‘Further Contractual Breach of Respondent’</u>	3
1.1. <i>‘Because of contractual intentions of correct customised tiles’</i>	3
1.1.1 Case Authorities	3
<i>Conclusion 2</i>	3
Request for Relief	4

1: 'CONTRACTUAL BREACH BY RESPONDENT'

- [1] The Claimant has found clause 1.3 of the contract to have been breached by the Respondent, with evidence showing the Respondent failing to measure the area behind the reception desk and therefore tile it [see exhibit 3].

1.1. 'Because of contractual intentions to tile the entire reception area'

- [2] The Claimant, Charcoal Architecture Pty Ltd, clearly expressed to the Respondent, Tiling Matters Pty Ltd, that one purpose of the project was to have the whole reception tiled, as the Respondent then proceeded to include this in the contract [see exhibit 1].
- [3] In the ground measurements and findings report [see exhibit 2] the Respondent falsely said that the 'entire area' of the reception had been measured, with the report further stating that the area behind the reception desk was not 'asked to be looked at'. The Respondent recognised a small space existed between the reception desk and the wall, and then chose not to measure it. Behind the reception desk still constitutes a part of the reception area and a reasonable person would measure behind the reception desk. Its close proximity to the wall is irrelevant.
- [4] Whilst the Claimant did suggest to the Respondent that certain parts of the reception must be measured, it is not reasonable to then assume that the few areas mentioned were the only areas that should be measured.

1.1.1 Case Authorities

- [5] *Appleby v Myers* (1867) LR 2 CP 651
- [6] *Stilk v Myrick* (1809) 170 ER 1168

Conclusion

- [7] The Respondent has been found to have breached the contract in regards to tiling the full area of the reception of the Claimant's business. The contract was agreed upon and signed on 5 December 2019. Failure to perform this contractual obligation should result in the Claimant being able to terminate the contract.

2: 'FURTHER CONTRACTUAL BREACH OF RESPONDENT'

[8] The tiles that were manufactured and supplied by the Respondent did not comply with the design submitted by the Claimant, constituting a breach of clause 5.1 [exhibit 3].

1.1. 'Because of contractual intentions of correct customised tiles'

[9] The Claimant held a reasonable belief that the customised tiles would look exactly like the design submitted and not similar.

[10] The Respondent assumed that a similar design would be enough to satisfy the Claimant, as shown in exhibit 4 when the Respondent commented that the tiles were 'red' and shaped like a 'flower'.

[11] The tiles provided mortified the Claimant, as the Claimant's business pride themselves on their designs, and the design they provided the Respondent with was not fully reciprocated. This can be seen in the overall shape, colour and the shading of the flower.

[12] The Claimant went to the Respondent because of their past experience and success. The Claimant trusted the Respondent to provide them with exactly what was requested and thus would not embarrass them or hinder their business reputation [see statement of facts]. The Respondent breached this trust.

[13] Even if the person placing the flower tiles on the ground was not artistically sound, the finished product was never going to be professional as the design of the tile itself never matched.

1.1.1 Case Authorities

[14] *Daulia Ltd v Four Millbank Nominees Ltd* [1978] 2 All ER 557

[15] *Highmist Pty Ltd v Tricare Ltd* [2005] QCA 357

Conclusion

[16] The Respondent failed to comply with clause 5.1 of the contract. The failure to perform a part of the contract to the necessary standard should result in the Claimant receiving sufficient monetary compensation.

Request for Relief

THE CLAIMANT RESPECTFULLY REQUESTS THAT THIS TRIBUNAL FIND THAT:

- [17] The Respondent failed to precisely comply with the contract and it will be terminated as a result and the Claimant will be awarded appropriate monetary compensation for the:
- (a) Inconveniences associated with the Respondent's breach and the;
 - (b) Embarrassments suffered by the Claimant from the Respondent's breach.