

Stone v Chappel [2017] SASCF 72

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Facts

- In 2009, Mr and Mrs Stone entered into a contract with Mr Chappel and Mrs Smallcombe to construct the shell and framework for an apartment in a retirement village.
- The contract specified that the ceiling height was to be 2,700mm above floor level.
- Upon construction, the ceiling height was between 32 - 57 lower than it should have been.
- There was conflicting evidence about whether it was feasible to increase the height of the ceiling. At the very least, it would be a difficult exercise, costing an estimated \$331,000 compared to a contract sum of \$1.85 million.
- At trial, the Stones were awarded \$30,000 in amenity damages.
- The Stones appealed, claiming \$330,000 in rectification damages.

Issues

- Were the Stones entitled to rectification damages?

Held

- In 1954, the High Court laid down the so-called "*Bellgrove principle*" that:
 - The usual measure of damages for defective work will be the cost of rectification (rather than, for example, the diminution in value); but
 - Rectification must be both necessary to conform with the contract and also a reasonable course to adopt.
- The Full Court of the South Australian Supreme Court held that the Bellgrove principle only applies if the construction work "*substantially*" complies with the contract.
- The Court held that the cost of rectifying the ceiling was out of all proportion to the resulting benefit to the Stones.

Quotes

"Rectification damages are awarded for a breach of a building contract unless there is good reason to adopt another measure because the award of rectification damages would be manifestly disproportionate to the attaining of the contractual benefit. That rule entrenches rectification costs as the primary measure of damages and emphasises the exceptional nature of any lesser award."

The proper approach in a case like this is to commence with an evaluation of the loss of amenity in the sense of the loss of enjoyment of and diminished aesthetic appearance of the apartment. The translation of that loss into a monetary figure is incapable of precision or even substantial explanation. Measurement of the extent of the loss of amenity against the price paid for the apartment provides some guidance. The Stones paid for a luxury apartment, the premium elements of which included its location, views, architectural design, floor space and ceiling height. All but the ceiling height have been delivered."

(Kourakis CJ at paragraphs [55] and [94])

Full Text

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SASCF/2017/72.html>

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