

CITATION: *Ian Michael Cope v Murray Neck Home World P/L* [2005] NTMC 085

PARTIES: IAN MICHAEL JOHN COPE

v

MURRAY NECK HOMEWORLD
PTY LTD

TITLE OF COURT: Small Claims

JURISDICTION: Local Court – Alice Springs

FILE NO(s): 20517405

DELIVERED ON: 22 December 2005

DELIVERED AT: Alice Springs

HEARING DATE(s): 5 December 2005

JUDGMENT OF: M LITTLE SM

CATCHWORDS:

REPRESENTATION:

Plaintiff:

IN PERSON

Defendant:

THROUGH COMPANY REPRESENTATIVE-
Mr. Maharaj

Judgment category classification:

Judgment ID number:

[2005] NTMC 085

Number of paragraphs:

10

IN THE LOCAL COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20517405

BETWEEN:

IAN MICHAEL JOHN COPE
Plaintiff

AND:

**MURRAY NECK HOMEWORLD PTY
LTD**
Defendant

REASONS FOR JUDGMENT

(Delivered 22 December 2005)

Ms M LITTLE SM:

1. This matter came before the Small Claims Court by way of a statement of claim for debt or damages. The plaintiff claimed poor installation of carpet resulting in unrepairable damage requiring replacement. The claim was in the sum of \$2,400.00, being the monies paid by the plaintiff to the defendant and company for the carpet and installation of the carpet, \$ 65.00 filing fee and service fee \$124.30. The defendant claimed that the existing underlay of the carpet was poorly laid and that the finish required could not be achieved without extensive work being carried out. Further, they claimed that the existing underlay was not suitable to have the carpet chosen put on top of it for an appropriate finish. Some underlay was supplied by Carpet Choice at no extra cost during a protracted period of attempted rectification. They dispute that any money should be repaid by Murray Neck Home World Pty Ltd to the plaintiff.

2. The matter proceeded by way of hearing on the 5 December 2005. The plaintiff appeared in person. Mr Maharaj, financial controller of Murray Neck Home World Pty Ltd appeared on behalf of the company. Notwithstanding the Notice of Hearing, the plaintiff did not have one of his witnesses available to give evidence but proceeded with the hearing. A summons for production of documents was issued to the Consumer and Business Affairs Department for the investigation regarding this matter. Mr. George James produced the file and an inspection was conducted prior to evidence being taken on the hearing.
3. I will now summarise the evidence, firstly on behalf of the plaintiff. The first witness called was George James from Consumer and Business Affairs. He gave evidence that he had a meeting with Steve Williams, the manager of Carpet Choice, a subsidiary of Murray Neck Home World Pty Ltd. At the meeting on 9 May 2005 he explained his position. He had seen the carpet and he thought the quality of the fit and the finish left much to be desired. He said that Mr. Williams responded "I thought you might." Mr. Williams could not recall who had decided to select the carpet and he was unclear as to whose choice it was. Mr. James said that Mr. Williams did not dissuade the consumer from using that particular type of carpet. Mr. Williams indicated to Mr. James that the choice of carpet was not the best, and that the smooth edge on the existing carpet underlay was not satisfactory. He said that Mr. Williams had agreed that using the existing smooth edge and the type of carpet for the use were not a good idea. Mr. Williams said that the underlay was satisfactory, but that the previous carpet had been thicker and had covered the edges of the room. The carpet chosen in this occasion was thinner and it showed the imperfections at the edges. There was no cross-examination of Mr. James.
4. The plaintiff then gave evidence. He said that in May 2004, he obtained quotes from Murray Neck regarding the carpeting of his property at 27 Lackman Terrace, Alice Springs. He had wanted industrial strength carpet. Steve Williams measured and recommended a carpet, namely, Godfrey Hurst Westgrove Carpet. The plaintiff said that Mr. Williams had said this carpet would be perfect for the job and that there would be no need to replace the underlay. Mr. Cope and his wife had questioned this and Mr. Williams had assured him that the underlay would be

fine. They took some time to choose the colour. They paid a deposit of \$400.00 on the 8th May 2004 and on the 10th June 2004 the carpet was partly laid. He and his wife had been painting the walls of their house and had cut the carpet down exposing the smooth edge. On 10 June 2004, he formed the opinion that the carpet lay was not looking good and he spoke to the carpet layer, Russell Turner. Mr. Turner said that the carpet chosen had been a cheap carpet. Mr. Turner had suggested there could be skirting around the edge of the room. Mr. Cope and his wife called a meeting with Steve Williams. Mr. Cope was assured that the lay would be redone and on 11 June 2004 some lay was redone but they could still put their fingers in between the carpet and the wall. They met with the General Manager of Murray Neck Home World who said the situation would be rectified. Russell Turner and a person named Jason did some more work, but the work was not satisfactory to the plaintiff. He was then advised that Jay Chapman, another carpet fitter, would fix the carpet. Mr. Chapman did some relaying and fixed the unsatisfactory join in the mid wall area. (This was in a sunken area of the lounge). Mr. Cope had been told that there was a life-time guarantee on installation of carpet. Mr. Cope paid the balance of the cost of the carpet and the installation (\$2,400.00 in full). Within two weeks of the finalisation of the installation, the carpet was starting to come away from the walls, which the plaintiff believed was because of the stretching to get the carpet laid. Each room is linked to each other and the carpet was pulling away throughout the house. The plaintiff was of the view that there was no further work that could be done to rectify the situation. Mr. Cope contacted Consumer and Business Affairs.

5. He was then cross-examined by Mr. Maharaj. It was put to him that he had requested a cheap type of carpet as he was selling the house. The plaintiff denied that he had asked for a cheap carpet. He agreed that the smooth edge was away from the wall. It was put to him that he was told that the underlay was a problem. He replied that Mr. Williams had said to leave the existing underlay. It was suggested that samples were provided to him and the choice of carpet was his. The plaintiff responded that Mr. Williams recommended the type of carpet and that the colour that was chosen between he and his wife. He did not deny that a range of samples were provided. He said that Mr. Williams walked around the house and placed his foot hard onto the edges of the carpet and had stated that the existing

smooth edge and underlay were fine. He said that he took Mr. Williams word for that, as he believed that he was being advised by an expert. Mr. Maharaj suggested that Russell Turner brought the matter of the finish up. He said that after the carpet was laid, Russell Turner had suggested skirting. It was put to him that he was happy with the job and that, as a consequence, he paid the balance of the monies owing. The plaintiff said that within two weeks the carpet was pulling back. It was put to him that it was difficult to put a carpet on to the steps as they were made of besser bricks. He did not make any response to that. He agreed that the join in the middle of the wall had been replaced. He said he had never been told that there was a problem and that he was told that the carpet would look good. He agreed that on the 11 August 2004 there had been a replacement of the carpets in bedrooms two and three and the join in the middle of the wall of the sunken area had been fixed. He said there was a bad finish through the bar area and through some of the rooms. After cross-examination, he said that he had paid the money in good faith. That was the close of the plaintiff's case.

6. The defendant then called Steven Williams, Manager of Carpet Choice. He said that Mr and Mrs Cope requested carpet and the type of carpet chosen was one of the several that he had shown them. The carpet which was on the floor covered the existing underlay and it felt ok prior to the carpet being lifted. A complaint was received after the carpet had been laid and Carpet Choice went to try and rectify the situation straight away. He said the Cope's were still not happy with the finish and they had another carpet layer in town who was sent to the job. That person spent a day replacing carpet in the lounge and in two of the bedrooms. Underlay was also put down and carpet on the steps. He said Mr. Cope was happy with the job and paid the next day. When asking for a quote, Mr. Cope had said that he had wanted to re-carpet but did not want to spend too much money. The Godfrey Westgrove Carpet had been chosen on price and Mr. Cope had been told that he could use the existing conditions to save extra money. He said that the original carpet layer, Russell Turner, had called him and asked him to come and have a look at the job as the smooth edge was hard to get up. As it transpired, it had been fibre glassed down and it took some time to get the smooth edge lifted. In some parts the concrete had come away as the smooth edge was lifted up. The witness then advised Mr. Turner to go ahead with the job. The witness was then

cross-examined. It was put to him that the Cope's had not asked for a cheap job. The witness answered that he showed the Cope's other carpets and worked out prices on other carpets and the Cope's selected the carpet. He said generally this type of carpet presents well. He said the old carpet in the house hid the problems which were revealed when they attempted to lay the carpet. It was put to him that he had told the Cope's that the underlay was fine. He agreed that he had said the underlay was fine. He said it was the smooth edge which was the problem. He agreed that he had authorised the replacement of the carpet up the wall as that had been badly done. He stated that was why he agreed to replace it. It was put to him that the job looked good when Jay Chapman had finished it, and the witness answered "that is why you paid". He stated that Jay Chapman was coming back but he did not come back until later than expected. Prior to him being made available to do further rectification on the carpet, Court proceedings had been issued. He agreed there was a life time guarantee with respect to carpet laying. He could not recall if this was stated to the plaintiff or not. In re-examination, it was asked of him where there more expensive choices which the Cope's could have made and he replied "Yes".

7. The witness Russell Turner was then called. He is a sub-contractor carpet layer with thirty years experience. He did the carpet laying work at 27 Lackman Terrace, Alice Springs. He pulled up the existing carpet and started to lay the new carpet. Steven Williams was called out to the job. The existing smooth edge had been put down with fibre glass and was stuck to the floor. The witness's view was that the carpet did not suit the house, it was a budget carpet. With respect to the besser bricks, he said he tried to patch up the job as best he could. He said he was not responsible for the preparation prior to the carpet being laid and it was laid in accordance with the standards throughout Australia. He was then cross-examined. With respect to the steps, he said he needed something to install the carpet onto. He said the carpet was a budget carpet and it was being laid over existing underlay which made it a budget job. He said that the domestic smooth edge was poorly installed in the existing job. That was the end of the Defendant's case and then I heard submissions from the Plaintiff and the Defendant. I reserved my decision in the matter. The burden of proof is on the plaintiff, the standard of proof is on the balance of probabilities.

8. The most significant factual dispute in this matter relates to whose choice the carpet was. I find on the balance of the evidence before me that the Cope's requested a job which was based primarily on cost. I do not find that they requested a job based solely on cost but it is evident from decisions that were made throughout the process that cost was a major consideration. I accept the evidence of Mr. Williams that he presented a range of carpet choices to the Cope's and that the final decision rested with the Cope's. The quotes that were given to the Cope's took into account cost considerations and it was suggested to them that savings could be made by using the existing underlay. I can not be satisfied that the plaintiff were advised that the existing smooth edge would be used. Nevertheless, when a quote is being given by persons who are undertaking the business of carpet laying (as in any other business) it must be assumed that they have taken into account matters such as this when quotes are given.

9. It is my finding that in this matter a quote was given without an adequate inspection of the existing conditions and the quote given did not take into account the fact that the smooth edge would not be appropriate for the job or how difficult it would be to raise. I am satisfied that the carpet has not been able to be laid properly. Mr. James from Consumer and Business Affairs gave evidence that the job was not up to standard. A lifetime guarantee is given by the Defendant with respect to the carpet laying. Within two weeks of the finish of the job, the carpet was pulling away and lifting. The finish has been assessed by Mr. James from Consumer and Business Affairs as inadequate. I have no doubt whatsoever that the defendant's have sought to rectify the situation without further costs to the Cope's. Nevertheless, the situation has not been able to be rectified and the only option now is for the carpet to be lifted and a complete re-carpeting occurring. It also seems apparent that the carpet which was chosen and which has been attempted to be laid on several occasions is not suitable to be re-laid. In submissions the plaintiff indicated that he was able to return the carpet to Murray Neck Home World Pty Ltd. I am satisfied on the evidence before me that the plaintiff has made out his case. The defendant is ordered to pay the plaintiff the monies as claimed in full. The Defendant is entitled to the return of the carpet by Mr. Cope upon such payment. It is apparent that the quote given did not take account of the existing conditions and therefore, the cost for the carpet and the

laying of the carpet is likely to be significantly more than this job was quoted. Nevertheless, a full refund of the monies paid by the plaintiff will mean that the plaintiff is in exactly the same position as he would have been, indeed he is in fact somewhat better off as there has been effort to remove some of the existing smooth edge, the expense of which the defendant has borne.

10. Judgment is entered for the plaintiff.

Dated this 22nd Day of December 2005.

M LITTLE
STIPENDARY MAGISTRATE