

# Price and value — a legal view

BY FRANA DIVICH

“Price is what you pay — value is what you get” is a quote from legendary American investment entrepreneur Warren Buffett. Although he was not referring to leaky buildings when he said it, these words have relevance when decision-makers decide what type of damages to award home owners.

There is no guarantee that the owners of a leaky building will be awarded the amount it will cost to repair their property. In a recent Weathertight Homes Tribunal (WHT) decision, *Angela Poynter Trust v Wang & Ors* [2011] NZWHT Auckland 40, the WHT awarded the claimants the loss in value to their property, as opposed to the cost of repairing the property. This was a difference of over \$100,000.

In 1999 a developer arranged for the house to be built. He contracted a labour-only builder and engaged other trades to carry out the building work. The council carried out 13 inspections during construction and issued a code-compliance certificate in November 2000. The developer sold the property immediately after it was completed.

The claimants were subsequent purchasers and came to look at the property in late 2006. They were a couple who had decided to sell their respective homes and buy one together. As they both had full house lots of furniture, they wanted a large home with two living areas so they could accommodate their own things. On December 1 2006, they signed a sale and purchase agreement to purchase the property.



Before signing the sale and purchase agreement, one of the claimants asked the vendors whether the property had any leaky issues. He was told that the vendors had experienced one leak caused by a blocked drain on the deck, which caused flooding into the garage. The claimants were reassured, even though one of the claimants had experienced leaks in the property he was living in then.

Prior to the agreement becoming unconditional, the vendors' real estate agent provided the claimants with a building report which had been completed in 2002. However, the claimants did not obtain an updated report or make any other enquiries. The purchase of the property settled in February 2007.

In late March 2007, following a particularly heavy rain storm, the claimants noticed leaks directly below the upstairs deck. As a result, they contacted a builder. He was concerned with the overall condition of the property. This set in motion a chain of

events that culminated in litigation in the WHT.

The claimants' relationship failed during the course of the litigation. They continued to live together in the house because they did not have the financial resources to live in separate properties.

The WHT when deciding whether damages should be on the basis of remedial costs or loss in value must judge each case on its own mixture of facts. There is no rule as to which is the most appropriate measure of loss. The damages awarded need to fairly compensate the claimants for the harm done while being reasonable between the claimants and the respondents. The claimants and the council called expert valuation evidence. Both experts agreed that the repair costs were not an economic use of the land, as the repair cost far exceeded the value of the improvements on the land.

The WHT found that remedying the defects in this particular property was not reasonable. The property would no longer be the claimants' family home as they had separated. One of the claimants wanted to stay in the house while it was repaired, but that claimant would need to buy out the other claimant, and this was going to be financially difficult. The claimants sought \$439,000 to repair the property. They were awarded the loss in value of \$331,000.

In each case the facts are carefully considered. In circumstances where the council's rating valuation reveals that the repair costs are more than the value of the house in question, then this is an indication that the claimant may end up "getting value", not the price to fix.

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