



Natural justice & truth for consumers in Queensland residential building matters

Case Study 1 – home owner ignored whilst structure continues to crumble

THE PROJECT

A new home project approx. cost \$247,000 plus

THE CONSUMER

Sharon, SPRINGFIELD LAKES Qld. 4300

An honest, hard working individual who by signing a residential building contract and who was astute enough to recognize the need to via due diligence to be suitably informed of the status of the licensed builder's credentials and dot the I's and cross the T's contractually. Normally this process would ensure necessary comfort as a consumer, that the safe guards as promoted by the Queensland Building Authority were satisfied.

Wrong.... unfortunately any comfort for the consumer has been surly shattered together with any anticipated belief that the statutory authority would offer to the consumer any level of protection and/or relief when the chosen building contractor proceeded to deliver an extremely inadequate, grossly under supervised, poor quality and non-compliant illegal product. The build process ignored the approved drawings and blatantly without any duty of care omitted obvious building elements/structures as required by statutory Acts & Codes to ensure adequate mitigation of risk. Subsequently there is structural failure of foundations and walls, inadequate drainage, termite infestation, internal flooding and failure of a sub-floor earth batter (approx. 3.0m high)

THE FACTS

Date	Activity	Detail	BSA dispute status and/or defect	Consumer status / comment
2006/2007	New home building contract signed 23 rd March 2006, works commenced October 2006	Inadequate building design, contractor instructed the designer. Developer covenants not met. The contract was not properly executed by the contractor	Works at handover not complete, 'as constructed' did not comply with the contract	Programme for completion was July 2007, contract duration was 16 months. Consumer was unaware at the time of any issues relative to completion.
December 2010	Major defects and flooding to lower level garage and living areas.		BSA and experts inspected the site 7 th March 2011	Dec 2010 complaint made by the consumer to the Building Contractor for major defects and damage to the residential property including major flooding, mud and soil throughout ground floor, earth wall collapsed, cracks to internal and external walls. BSA requested a formal complaint be registered by the home owner 29 th March 2011
1 st March 2011	Building contractor un-signed letter	Inferring that it is the home owners fault		Home owner accused of not allowing a retaining wall to be built in the sub-floor that was not on the Approved Drawings?
7 th June 2011	BSA RESOLUTION SERVICES – initial inspection report carried out	BSA engaged 4 No. resources to the site inspection	BSA concluded : - health & safety issues for home owner - structural cracking to walls internal & external	Homeowner remains in residence, has no option
9 th June 2011	Works to strip wall cladding and temporary prop the rotated LHS retaining wall using substantial rhs steel bracing installed under the direction of the BSA	No notice given to the home owner. Approx. 1/3 of the garage floor area is now unable to be used		Several of these temporary steel bracing members are now partially covered with natural soil as the illegal sub-floor batter is continuing to fail In addition, the entire ground floor is gutted with plasterboard removed to approx. 1m, the water damaged floorboards in the entry had to be removed leaving a bare concrete floor which is not inviting for an entryway, the water damaged carpet in the downstairs bedroom was also removed leaving a bare concrete floor. The entire ground floor is unusable and the owner has been denied the use of the ground floor of her home for more than 20 months to date. She has to see this every time she enters and leaves her premises. It is soul destroying for the owner.

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9 th June 2011	Direction order given by the BSA to the building contractor to rectify within 28 days	Rectification scope ordered is insufficient to satisfy full mitigation of the problem	Building contractor 'denied liability' and disputed the order because he disagrees with the decision that he is required to rectify??? BSA then refers the dispute matter to be resolved in the Queensland Civil & Administrative Tribunal	<i>"The ultimate insult.....for the building contractor to destroy my home and does not admit it and more over, shame on the BSA and QCAT to even entertain such a blatant denial of responsibility towards me as a consumer."</i>
24 th June 2011	Engineers report	6 No. probable causes for structural failure in this property that directly translate into non-compliance and incompetence by the building contractor in ignoring the building approved drawings.	The recommendations and solutions are onerous and complex and even if all of the solutions are carried out, the residence would still not comply with the original BA drawings	No acknowledgement from the BSA or building contractor that the BSA generated engineers report has relevance. The submitted drawings in archive with Ipswich City Council do not reflect the 'as constructed' residence.
Nov. 2011	BSA Compulsory QCAT conference	Requested by the BSA for the home owner to attend a compulsory conference regarding the building contractor vs BSA QCAT dispute.	The compulsory conference was nothing more than attempt by the authorities and QCAT to coerce an agreement from the home owner to accept some level of liability for the failure of the structure and subsequent damage QCAT process unresolved	Why does the home owner have to accept any responsibility for mitigation of damage when : 1/ if it were necessary why didn't the drawings and contract reflect that requirement? 2/ how would the home owner even know what to do? 3/ the building contractor is responsible and has ignored the Building Code requirements! 3/ the home owner has suffered enough monetary loss without having to do what the building contractor has not done!
21 st Feb 2012		Builder's lawyers nominated that the experts have a common view that the lack of landscaping and site drainage are the contributing factors for flooding and structural failure	Homeowner formally instructed to submit a 'proposed external landscaping works and the timing of those works'	How would the homeowner know what to do. The builder obviously didn't know what to do, otherwise it would have included in the original contract and 'as constructed' the site drainage does not comply

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9 th March 2012	AGREEMENT deed - between the Building Contractor and the BSA. Unsigned by the BSA.	Rectify the works	Agreement between the Building Contractor and the BSA is grossly inadequate and does not recognise the BSA commissioned engineers report and recommendations and is at best vague in relation to scope. The agreement has no anticipation of time duration for start or finish dates. QCAT process unresolved	An extremely unsatisfactory solution for the home owner in relation to the nominated scope, time frame and of course has had no input to this agreement, is not a party to and therefore no inherent consumer protection.
Current	Several emails from the BSA during the past months informing the home owner of proceedings and access logistics difficulties between the agreement deed parties and the homeowner		Interestingly an email from the BSA May 29 th explaining the argy-bargy difficulties in instructions to solicitors to refer back to the tribunal for decision, a “stay” motion on the direction order and the blunt statement that clearly nominated the home owner is in the hands of the BSA and has no say in anything and a threat issued , I quote <i>“if we (the BSA) do not successfully win in the tribunal then you may be entitled to nothing”</i> unquote QCAT process unresolved	It is beyond belief that by signing a residential building contract and paying in excess of \$250,000 the licensed builder who has grossly failed to deliver and has left the residential structure with the real potential for a demolition order, appears to have all the rights in his favour, is being supported by the building authority and the home owner has nothing. Please consider the following : 1/ Whence bought to a formal complaint issue by the home owner the building contractor’s position when taken to task via a building authority direction order, denied any liability and set up a dispute action against the BSA in QCAT 2/ When the building authority investigated the residence on site it was recognised the structural, health and safety issues for the home owner were extreme however she still remains in residence, has nowhere to go. 3/ The structure has failed, has temporary bracing installed and is continuing to suffer foundation soil movement. 4/ Water ingress continues to be evident due to inadequate drainage and water proofing to retaining walls 5/ Termite infestation and breched termite barriers are not addressed 6/ An agreement deed has been issued by the building authority for the builder to rectify without any recognition of a full scope to be rectified. No specific time frame and no rights whatsoever for the home owner who was not consulted. The comprehensive independent engineers report and recommendations have been ignored. 7/ The building contractor has not been given any penalty at all 8/ Most damning of all is the home owner has hanging over her head the threat that a bogus dispute in the tribunal the subject of which is her home and her future and of which she has no management control, could conclude with ‘case closed’...the problem is hers!!!

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Update September 2012	Builder directed to rectify by the BSA	Homeowner is directed to give access	Builder has no contract with the homeowner there is no defined scope, no date for completion, no approvals, no certification, no insurance. So essentially, it is illegal building works QCAT process unresolved	To properly rectify this residence would be a demolition and rebuild process. Expert advice supports this view due to the non compliant "as constructed" foundations, footings, walls, non approved retaining walls and non compliant drainage. Structural works have commenced and the consumer is forced into a process dictated by the contractor and authority for which she has been denied ownership of what is being done to her residence, there is no consultation, no right of reply, no warranties or insurance. The ultimate insult!

For sanity sake this home owner has suffered enough, and is completely innocent of any wrong doing.

NATURAL JUSTICE & TRUTH for CONSUMERS please

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