

**Northern Territory of Australia
Building Practitioners Board**

In the Inquiry into

The Director of Building Control

and

ACT Builders (NT) Pty Ltd - a Registered
Building Practitioner and

Mr. Ioannis Glynatsis - a Registered
Building Practitioner

Reasons for Decision – Director of Building Control & ACT Builders (NT) Pty Ltd and Mr. Ioannis Glynatsis (No. 2)

Introduction

1. The background concerning two referrals alleging professional misconduct in relation to ACT Builders (NT) Pty Ltd (ACT Builders) which is a corporation registered as a building practitioner and Mr. Ioannis Glynatsis personally is described in the Reasons for Decision concerning the same parties dated 4 April 2013 at paragraphs 1- 4 of that decision reported as *Director of Building Control & ACT Builders (NT) Pty Ltd and Mr. Ioannis Glynatsis*.

Allegations of Professional Misconduct

2. There are two referrals from the Director of Building Control alleging professional misconduct in relation to each building practitioner, which are identical. These are that each building practitioner:
 - (a) have refused or failed, without reasonable excuse, to comply with a reasonable request from the Director to answer a question, provide information or produce a document, pursuant to section 33(1)(a) of the Act; and
 - (b) are both considered guilty of professional misconduct pursuant to sections 34S(f) (as detailed above) and 34S(g) of the Act, as the building contract entered into by ACT Builders (NT) Pty Ltd resulted in payment of \$67,644.60 (deposit and first progress payment) to Building Materials Australia Pty Ltd for prescribed building works at Lot 5117 Galbraith Road Virginia. Following this payment there was no building permit obtained or works commenced. Mr. Ioannis Glynatsis is the sole director, secretary and shareholder of both Building Materials Australia Pty Ltd and ACT Builders (NT) Pty Ltd.

3. These are the reasons for decision in relation to both building practitioners concerning the referral in (b) only.

The Complaint

4. A person may make a complaint that a building practitioner has committed an offence against the Act, carried out work in a negligent or incompetent manner or is otherwise guilty of professional misconduct (section 26(1)).
5. A complaint in this matter, in the form of a letter dated 15 February 2011 was received by the Director on the 22 February 2011 that section 48 B (1) of the Act had been breached by both building practitioners. The complaint was made by Davison Legal, Barristers and Solicitors on behalf of Mrs. Heather Reed and Mr. William Reed. This section concerns a requirement that a prescribed building contractor must not commence or carry out prescribed building work without a contract with the owner of the land. A contravention of this provision may result in the imposition of a civil penalty amongst other things. The provision as the Act stood in 2011 was in the following terms:

48B Building contract to be entered into

- (1) A prescribed building contractor must not commence or continue to carry out prescribed building work unless the building contractor has entered into a contract with the owner of the land on which the building work is to be carried out or with a person authorised by the owner to enter into the contract.

Penalty: If the offender is a natural person - \$10 000.
 If the offender is a body corporate - \$50 000.

6. A prescribed building contractor is a type or "category" of registered building practitioner. The complaint was in relation to both building practitioners. The complaint related to ACT Builders, Mr. Ioannis Glynatsis and Building Materials Australia Pty Ltd (BMA) concerning the construction of a house at 106 Galbraith Road, Virginia in the Northern Territory. ACT Builders and Mr. Ioannis Glynatsis were registered as a Building Contractor Residential (Unrestricted) at the relevant time. BMA was not a registered building practitioner. The sole Director, Secretary and shareholder of BMA and ACT Builders was Mr. Ioannis Glynatsis.

Hearing Second Complaints

7. The second allegation of professional misconduct was denied by both building practitioners and proceeded to hearing on the 30 November

2012 and concluded on the 14 December 2012 when the allegations of professional misconduct in relation to (b) were dismissed by the Board. Written submissions were also filed by the parties in relation to the contested hearing of professional misconduct.

8. A Northern Territory Building contract was admitted in evidence without objection. The contract was to build a house as outlined in paragraph 6. On the face of the document the parties to the contract are BMA, ACT Builders and Mrs. Heather Reed and Mr. William Reed. The contract was apparently signed by a Mr. Stephen Stirrup on behalf of BMA and ACT Builders.
9. During the course of the hearing the Inquiry Board heard oral evidence from Mrs. Heather Reed, Mr. William Reed the complainants to the Director of Building Control and Mr. Glynatsis.
10. A notice for Mr. Stephen Stirrup to attend the hearing was issued by the Inquiry Board but was not able to be served and consequently Mr. Stirrup did not give or produce evidence of any nature.
11. Mrs. Reed's evidence was detailed and comprehensive. An affidavit affirmed on the 24 January 2011 by Mrs. Reed was also in evidence before the Inquiry Board. Mrs. Reed's evidence in particular outlined a history of dealings with Mr. Stephen Stirrup, which commenced in response to an advertisement for a building product called "Lamina" in April 2010. According to her evidence this contact resulted in her and Mr. Reed paying two cheques in the sums of \$11,276.60 and \$56,368.00 to Mr. Stirrup on the 21 June 2010. The payments were for a deposit and "first payment of the whole of the contract price" to construct a house. Further according to Mrs. Reed invoices and receipts were issued on BMA letterhead dated 21 June 2010. The rest of her evidence discloses a sorry history of dealings with Mr. Stirrup ending in October 2010 with no building or construction having taken place and no refund of the monies paid to BMA having occurred.
12. Mrs. Reed in her evidence was of the view that BMA would engage ACT Builders to build the house. She also stated that Mr. Stirrup had signed the contract on behalf of ACT Builders and that she had no dealings with Mr. Glynatsis or ACT Builders. There was no other basis in her evidence for her view that ACT Builders would construct the house or that it would be the recipient of any of the monies ostensibly paid to BMA.
13. Mr. Reed gave evidence and submitted a statutory declaration. He stated that Mr. Stephen Stirrup signed the contract on behalf of ACT Builders and could not recall whether there had been any discussion as to ACT Builders role and that at the time of signing the contract there had been no discussion as to whom would build the house.

14. Mr. Reed further gave evidence that he met Mr. Glynatsis in the company of Mr. Stirrup sometime in mid August 2010 when Mr. Stirrup identified Mr. Glynatsis as the builder who is going to build the house. Mr. Reed identified Mr. Glynatsis whilst giving evidence during the hearing. Mr. Glynatsis in his evidence denied that this was the case. Mr. Reed's evidence further stated that he spoke to Mr. Glynatsis on 3 December 2010 and amongst other things requested a refund of monies paid and that Mr. Glynatsis said, "I will have to check my account to see if there is any record of it and get back to you". Mr. Reed also stated in his statutory declaration that he told Mr. Glynatsis that Mr. Stirrup had signed a contract with "us" on behalf of ACT Builders. He further stated that Mr. Glynatsis said "He has no authority to do that as I have my own certifier". None of this was put to Mr. Glynatsis in cross-examination.
15. It is clear from the evidence that invoices and receipts were issued to the Reed's on BMA stationary. Apart from the contract all documentation was issued on BMA letterhead including quotations and invoices requiring cheques to be payable to BMA. There is no reference to ACT Builders or Mr. Glynatsis in these documents.
16. Mr. Glynatsis gave evidence and submitted a statutory declaration declared on the 29 November 2012. He personally and on behalf of ACT Builders stated he did not execute the contract referred to in paragraph 8, and further denied that Mr. Stirrup had any authority to do so on behalf of ACT Builders. His evidence was that BMA only ever sold building materials and "never undertook or intended to undertake building works of any description." He further stated that Mr. Stirrup "never had any association with ACT Builders, nor did he have any authority to act for and/or on its behalf" and that he was "engaged as a sales agent to find prospective purchasers" for BMA's stock. He further stated that Mr. Stirrup advised him that he had "someone interested in purchasing some insulation to the value of \$68,000" and that he understood the persons interested to be the Reeds.
17. An invoice was produced attached to the statutory declaration of Mr. Glynatsis on the face of it for the sale of insulation for \$68,000.00. This was according to Mr. Glynatsis the only BMA record that he now had possession of in relation to the Reeds and that he has no knowledge of any other dealings between Mr. Stirrup and the Reed's. Mr. Glynatsis's evidence in relation to Mr. Stirrup was to the effect that he had business dealings with him but at no stage did those dealings include house construction in relation to the Reeds. Mr. Glynatsis testified that BMA's office had been broken into and the computer where records were kept had been stolen. He gave evidence that this was not reported to the police. There was some corroboration by Mr. Reed in his evidence that he had seen damage to the premises of BMA.
18. The Directors legal representative, Mr. Hutton submitted that Mr. Glynatsis evidence was unreliable and the invoice a recent invention.

This was not put to Mr. Glynatsis in cross-examination. He also submitted that Mr. Glynatsis's evidence was unreliable.

19. Mr. Mariotto on behalf of Mr. Glynatsis and ACT Builders submitted that there was no evidence his clients had any knowledge that Mr. Stirrup negotiated the terms of the contract on their behalf, that they received any monies for the construction of the house pursuant to the contract and that it was clear that the entity responsible for building the house was BMA and there is no relevant evidence linking Mr. Stirrup's actions with Mr. Glynatsis nor ACT Builders. Mr. Glynatsis's uncontested evidence was that he received monies for reasons unrelated to the contract.
20. Upon resumption of the hearing on the 14 December 2012 the legal representative for the Director, Mr. Hutton made the following submission:¹

Well, to be quite frank about it, Mr. Chairman, I don't think the evidence has come up to the standard required to prove that Mr. Glynatsis or ACT Builders in these matters are proven; and in that regard I cite directly from the submissions at paragraph 40 where it says that, just in brief, the Board has to be satisfied of matters to a reasonable satisfaction and that's not produced by inexact proofs, indefinite testimony or indirect inferences; and the submission on behalf of the Director is that there was a prima facie case when the matter was referred to the Board. The complainants, if I may call them that, Mr. and Mrs. Reed, have given their evidence and their evidence was to the effect that they really didn't think they were dealing with Mr. Glynatsis or ACT Builders.

21. In the Inquiry Board's view as outlined above there was some evidence given by the Reed's concerning their beliefs in relation to ACT Builders involvement. There was some evidence implying some links between Mr. Glynatsis and Mr. Stirrup. The Inquiry Board did have some concerns with Mr. Glynatsis's evidence and whether he was being completely frank during his evidence. Nonetheless the Board has to be satisfied as put by Mr. Hutton for the Director that "there is sufficient evidence before it to link the activities of Mr. Stirrup to Mr. Glynatsis or ACT Builders".
22. In the Inquiry Board's view there was not sufficient evidence to link Mr. Glynatsis and ACT Builders with Mr. Stirrup. It has not been established by the Director of Building Control on the balance of probabilities that Mr. Glynatsis had knowledge that Mr. Stirrup was committing him personally or ACT Builders to building the house nor that he or ACT Builders benefited from the money paid by the Reed's with the knowledge that the money had been deposited for this

¹ Transcript 14 December 2012 p2.

purpose. In these circumstances both Mr. Glynatsis and ACT Builders are not guilty of professional misconduct and both complaints were dismissed.

Costs

23. Submissions were also made in relation to the costs of the proceedings in relation to both sets of complaints referred to in paragraph 2 of these reasons. The situation is that in relation to the first complaint there was a finding of professional misconduct in relation to each building practitioner upon admissions of guilt by the practitioners concerned. In relation to the second complaint after a hearing the building practitioners have been found not guilty of professional misconduct.
24. The *Building Act* provides that the Inquiry Board may order the Territory “to pay all or a specified part of the practitioner’s reasonable costs” (s34Q) if the practitioner is found not guilty of professional misconduct. The use of the word “may” is indicative of a discretion residing within the Inquiry Board as to whether a costs order should be made in these circumstances. In other words it is not obligatory to make such an order. The Act further provides that upon a finding of professional misconduct the Board may “require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry” (s 34T(b)). This discretion is given to the Inquiry Board in the context of a range of disciplinary action that the Board may take after a finding of “guilt”.
25. Mr. Hutton on behalf of the Director submitted that Mr. Glynatsis and ACT Builders pay the Director’s costs in relation to the first complaint, which was admitted by both building practitioners. He does so on the basis that: “Whilst not all matters referred to the Board have been found to constitute professional misconduct, sufficient of them have done so to justify the referral and a claim for the Director’s costs.” It was further submitted that details of those costs will be provided and that in the alternative each party “bear its own costs.” The details of the costs were never submitted.
26. Mr. Mariotto on behalf of his clients submitted that an award of costs is discretionary and that the “ordinary rule that costs should follow the event should be maintained..”. It was further submitted that in relation to the findings of professional misconduct each party should bear their own costs or only a nominal amount be determined in favour of the Director. In relation to the complaints in which his clients were found not guilty it was submitted that the Director should pay costs “on a party-party basis at the Supreme Court scale.” These submissions are not supported by any reasons, case law or other references.
27. The primary reason put by Mr. Mariotto is, to quote “the most influential factor in the discretion” that costs should be awarded against the

Director is that once Mr. Glynatsis's "statement in chief " was provided on the 29 November 2012 the Director then had an opportunity to not press the complaint. This presumably refers to the statutory declaration referred to in paragraph 16 of these reasons. This statutory declaration came some 21 months after Mr. Glynatsis was first notified of the complaints pursuant to a letter in February 2011.

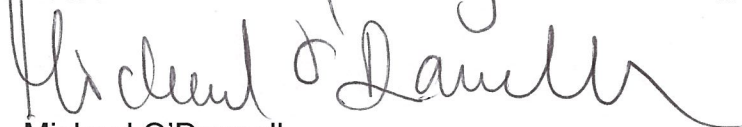
28. The Inquiry Board decided not to award costs to either party as it finds that the proceedings should be viewed as a whole where one set of complaints were established and one set of complaints were dismissed. These findings occurred in the context of very late admissions of professional misconduct being made by the practitioners concerned and that a civil penalty was the most appropriate penalty in the terms provided for in section 34T of the Act as referred to in the first set of reasons for decision.

Reasons to be Public

29. The Board directs that these reasons be available for distribution to the public including on the Building Practitioners Board website. No reasons have been put as to why publication of these reasons should not occur. It is important that the public is aware of findings in relation to professional misconduct.
30. The Board directs that these reasons be provided to the complainants, the Director and Mr. Glynatsis and ACT Builders pursuant to section 34P(2) of the Act.
31. The complainants, the Director and Mr. Glynatsis and ACT Builders have rights of appeal to the Local Court within 30 days after being notified of this decision.

Dated:

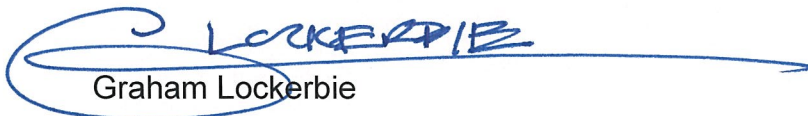
17 May 2013



Michael O'Donnell
Chair



Paul Nowland



Graham Lockerbie