

# Failure to take out domestic building work insurance

The judgment of Ashley J in *Dover Beach Pty Ltd & Stone v Geftine Pty Ltd*, a decision of the Court of Appeal of the Supreme Court of Victoria delivered on 17 December 2008, is of importance to builders undertaking residential building work.

The principal question was whether the builder's failure to take out domestic building work insurance rendered the contract with the owner void.

Geftine, as owner, engaged Dover, as builder, to renovate commercial premises by constructing a dwelling above. In VCAT, Geftine sought damages for defective works and diminution in the value of the premises by reason of Dover, in breach of the *Domestic Building Contracts Act 1996*, failing to provide domestic building insurance for the works. Dover counterclaimed for unpaid progress claims.

The Tribunal allowed damages to Geftine for the diminution in the value of the dwelling. More importantly, it held that Dover had lost its right to claim any amount owing under the contract, other than variations, because the lack of insurance as required by Section 31(1) of the *Domestic Building Contracts Act 1995* (the DBCA) rendered the contract void against Dover.

Dover appealed the Tribunal's finding and the question of law for consideration by the Court of Appeal was "Whether ... it was the legislative intention that an agreement for domestic building works, where the builder has not taken out insurance of a kind required by statute, is void against the builder."

After tracing the history of the requirement for the registration of builders undertaking domestic building work, Ashley found that there is no provision in the *Building Act 1993* addressing the requirement that a builder be insured for domestic building work. Although non-compliance with Section 31(1) of the DBCA (which requires the inclusion in the contract of details of insurance for domestic building work) may render the contract illegal, it does not render the contract void and therefore unenforceable by the builder against the owner. Dover was therefore entitled to recover its unpaid progress claims.

It should be noted that this decision does not entitle a builder to assume that insurance in domestic building work of a value of more than \$5,000 is unnecessary.



**Building disputes**  
Are payments overdue?  
Has construction come to a halt?  
Is VCAT or Court the next step?

**Contract advice**  
What is your risk allocation?  
Are you SOP compliant?  
Will your contract conditions stand up?

**Rigby Cooke Lawyers**  
Industry leaders  
Straightforward  
Cost conscious

Building and Construction Team  
03 9321 7836  
awhitelaw@rigbycooke.com.au  
Level 13, 469 La Trobe Street, Melbourne VIC 3000 Australia  
www.rigbycooke.com.au

**rigbycooke | lawyers**