

**Brown v Smith[2023] QCAT 341**

**FACTS**

The case of *Brown v Smith[2023] QCAT 341* involved a complaint made by a home owner (**Brown**) against a building inspector (**Smith**) after discovering significant defects in the floor frame of the home.

Brown entered a contract for the purchase of the home in June of 2020 and contracted with Smith to do an inspection and report on the home in satisfaction of a condition of the purchase contract.

Smith completed the inspection but later admitted that he did not inspect the underfloor space, on the basis that it was inaccessible and did not note the lack of such an inspection in the report.

This first contract for the purchase of the home was also conditional on Brown obtaining finance for the home, and the contract was abandoned after finance was found to be not available.

In September of 2020, Brown entered a second contract for the purchase of the home, which did not carry any conditions for the purchase, and this contract as completed.

After defects became apparent in the underfloor space, Brown sued the inspector for failing to identify the defects in the report. At trial the applicant did not bring any evidence in support of the allegation that the purchase was made in the reliance on Smith's Report.

**ISSUE**

Whether the applicant had proved the applicant had relied on the pre-purchase report, for the purchase of the home?

**FINDING**

The Tribunal found that the tribunal could not accept that the purchase (under the second contract) occurred in reliance on the pre-purchase report, as this was not alleged anywhere in the evidence provided, stating:

*“ 52 On the evidence and arguments before me I am in no doubt that the respondent failed to have properly performed his role as an inspector providing pre-purchase inspection reports, and accordingly in my opinion he should be held accountable for same. But given the manner in which the applicant has presented her case in this Tribunal, this particular proceeding is not one in which that accounting can be realised for the applicant. The outcome may have been different had she been able to establish, with supporting evidence, that she did rely on his report for the purposes of the Second Purchase Contract and ultimately purchasing the house, and that the nature, extent, and asserted cost of that rectification was able to have been contemplated at the time of entry into the contract for the pre-purchase inspection, and that it was supported by independent evidence in all those respects. But in the absence of that evidence, there is simply no basis I can reach a finding in favour of the applicant. That is the cause of the applicant's failure in this proceeding to obtain relief from this Tribunal, not the respondent's successful defence of her claim.”*

**IMPACT**

While Tribunals have more flexible rules of evidence than the courts, this decision serves as a reminder that even obvious facts need to be proved with evidence.

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