

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D761/2006

CATCHWORDS

Domestic building – action of indemnity against builder – costs.

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| APPLICANT | Australian International Insurance Limited |
| RESPONDENT | Christopher Byrne |
| WHERE HELD | Melbourne |
| BEFORE | Senior Member D. Cremean |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 24 January 2007 |
| DATE OF ORDER | 25 January 2007 |
| CITATION | Australian International Insurance Limited v Byrne (Domestic Building) [2007] VCAT 125 |

ORDER

- 1 Order the Respondent to pay the Applicant the sum of \$27,390.00 with costs (which I fix) of \$3,977.00. I grant a formal stay of 1 month.
- 2 I do not order any sum be paid by way of interest.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

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| For the Applicant | Mr M. Oldham, Solicitor |
| For the Respondent | Mr C. Byrne in person |

REASONS

- 1 In this matter an amount is sought in the sum of \$27,390.00.
- 2 Entitlement to that sum arises allegedly pursuant to cl 3.7.1. of the Policy of Insurance in respect to the premises at 56 Eel Race Road, Seaford.
- 3 The claim is that that sum of money must be paid by the Respondent by way of reimbursement of expenses of the Insurer in respect of defective works at those premises.
- 4 I have read the Affidavit of Mr Hind and the Statutory Declaration of Mr Byrne. I have also heard sworn evidence from Mr Byrne who tells me as well that neither he nor his wife works; that he has a 4 year old daughter; that he suffers several medical conditions; and that he lost a large sum of money investing in HIH (which subsequently collapsed of course).
- 5 Mr Byrne maintains he should not be responsible for the sum in question because the works have become defective from any of a number of causes and that he was never given the opportunity to inspect or engage his own trades.
- 6 I have a great deal of sympathy for Mr Byrne who impressed me as an honest and reasonable man.
- 7 I must, however, apply the law as I see without either favour or disfavour.
- 8 I rely upon the affidavit of Mr Hind (together with the exhibits) which, in my view, on the balance of probabilities, establishes I should order in favour of the Applicant. The evidence of Mr Byrne leads me only to surmise and guesswork and I cannot act on such a tenuous basis I am afraid.
- 9 I shall order in favour of the Applicant accordingly.
- 10 Further I order costs under s109 of the *Victorian Civil and Administrative Tribunal Act 1998* being satisfied as required it is fair to do so.
- 11 I decline to order interest.

SENIOR MEMBER D. CREMEAN