

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D855/2005

CATCHWORDS

Domestic building – stay application – late filing – costs.

[2006] VCAT 1059

FIRST APPLICANT	Martin Browne
SECOND APPLICANT	Greenleaf Nominees Pty Ltd
FIRST RESPONDENT	H.G.F. Limited
SECOND RESPONDENT	Brett Andrew King
THIRD RESPONDENT	Rebeckah King
FOURTH RESPONDENT	Christopher Teston Lane
FIFTH RESPONDENT	Dee Christine Lane
SIXTH RESPONDENT	Wendy Elizabeth Brown
SEVENTH RESPONDENT	Body Corporate 442930L att: Peter Michell
EIGHTH RESPONDENT	Madeleine Louise HO
NINTH RESPONDENT	Geoffrey Phillip Luff
TENTH RESPONDENT	John Edward Wilkinson
ELEVENTH RESPONDENT	Denise Nancy Branson
TWELFTH RESPONDENT	Michelle Nookdin Hoodbhoy
THIRTEENTH RESPONDENT	Margaret Mary Hill
FOURTEENTH RESPONDENT	Robert Cilia
FIFTEENTH RESPONDENT	Omiros Emmanoulides
SIXTEENTH RESPONDENT	Theo Theodorou
SEVENTEENTH RESPONDENT	Metro Roofing Supplies Pty Ltd
WHERE HELD	Melbourne
BEFORE	Senior Member D. Cremean
HEARING TYPE	Directions Hearing

DATE OF HEARING

29 May 2006

DATE OF ORDER

29 May 2006

ORDER

1. I amend the name of the First Respondent to Victorian Managed Insurance Authority.
2. I direct that the Second to Thirteenth Respondents be permitted to bring an application for a stay (partial) of the proceedings in this matter. The letter of 26 May 2006 shall stand as their application.
3. Any other party may join them in that application by letter filed and served by no later than 5 June 2006.
4. By 5 June 2006 the Second to Thirteenth Respondents must file and serve any affidavit or affidavits in support together with copies of any submissions.
5. By 13 June 2006 any other party joining the Second to Thirteenth Respondents in their stay application must also file and serve any affidavit or affidavits in support with submissions, if minded to do so.
6. By 30 June 2006 the Applicants must file and serve any affidavit or affidavits in opposition and copies of submissions.
7. By 30 June 2006 any other party may join the Applicants in opposition to the stay application and, if doing so, must do so by affidavit or affidavits filed and served by such date, if so minded.
8. By 6 July 2006 the Second to Thirteenth Respondents (and any other party joining them) may file and serve any affidavits in reply.
- 9. I set down for hearing the stay application on a date to be notified to the parties after 10 July 2006.**
10. I adjourn over the Applicants' application for joinder pending the outcome being known of the hearing referred to paragraph 8.

11. Order the Second to Thirteenth Respondents to pay the costs of the Applicants in respect of this day. In default of agreement by 30 June 2006 I refer the assessment of the same to the principal registrar under s111 of the *Victorian Civil and Administrative Tribunal Act 1998* who shall assess the same according to Supreme Court Scale. I empower him to make such arrangements with the parties as may be necessary or appropriate.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

For the Applicants:	Mr J.M. Forrest of Counsel
For the First Respondent:	Mr J. Collier, Solicitor
For the Second to Thirteenth Respondents:	Mr A. Donald of Counsel
For the Fourteenth Respondent:	No appearance recorded
For the Fifteenth Respondent:	Mr A. McAdam, Solicitor
For the Sixteenth Respondent:	In person
For the Seventeenth Respondent:	Mr P. Raftopoulos

REASONS

1. This matter today was to be the hearing of an application for further joinder by the Applicants.
2. I was of the view that in light of a letter received this day from two of the proposed joined parties, the matter could not proceed. I note as well there is a reference in such letter to an entity – Pacific Estates Pty Ltd. However, Mr Forrest tells me he would have been able to proceed in light of further instructions.
3. The matter of the joinder application has however, been overtaken somewhat by an application for a stay sought to be made by the owners. This is set out in a letter of 26 May.
4. I am not certain I would agree that the application for a stay (of a part of the proceeding) is well-founded. I have only the barest idea of the grounds of the stay (as set out in that letter and as mentioned by Counsel). A stay would be unusual in the circumstances outlined to me. There is no parallel proceeding anywhere else.
5. Counsel for the Applicants objects to my hearing the stay application and says it should be adjourned on the ground he has been given no notice of it and wants to consider his position, get instructions and file possibly answering material.
6. I think this is something I must allow. I refer to ss97 and 98 11 of the *Victorian Civil and Administrative Tribunal Act 1998*. As well I bear in mind the principles set out in *Queensland v J L Holdings* (1997) 141 ALR 353.

7. I am therefore adjourning off the stay application on procedural fairness grounds. The application for such stay should have been made much earlier. I am unable to hear the stay application (or find out more details about it) because, rightly, in my view, it should be adjourned off. I cannot hear it and then, on a later date, allow the Applicants to try and answer it. They are not certain of the case they must meet so I am informed.
8. I am of the view therefore that if the owners do want to pursue the stay application (as they appear to do) then I should adjourn the matter this day. I agree that the subject matter of the stay application is logically prior to that of the joinder application. Counsel for the Second to Thirteenth Respondents appeared to agree that this was so. If a stay is granted – on a basis I am yet to find out fully about – it may seriously affect the viability of the joinder application.
9. Therefore I propose that I should adjourn the stay application and make appropriate directions.
10. I make it clear I am adjourning this matter not because the joinder application cannot proceed but because the stay application has been served late necessitating an adjournment to enable the party it is aimed at to properly consider it.
11. I wish to point out also that the stay application does not, from what I can make of it, distinctly relate to the matters I dealt with on D714/2006 when I dismissed a s75 application.
12. I shall make directions and orders accordingly.

13. As to costs, I note the First Respondent does not seek or oppose costs. I note that the Applicants seek costs and rely on s109(3) (a)(iv) of the 1998 Act. This is opposed by the Second to Thirteenth Respondents and by the Fifteenth Respondent – the latter in particular submitting costs should be reserved. The Second to Thirteenth Respondents also appeared to adopt this position – of costs being reserved – latterly.
14. It seems to me that the proceedings this day were listed initially to hear and determine a joinder application. It is correct as Counsel for the Fifteenth Respondent to say this, as do the other parties. Indeed, I consider this even was the Applicants' position.
15. However, as matters have turned out, the application for joinder has been overtaken by the application for a stay. In a way the Second to Thirteenth Respondents have been outmanoeuvred.
16. I am not persuaded as I have said that the stay application is one which would be well founded. The Tribunal has a duty to hear the whole of a dispute when its jurisdiction is invoked and also there is the issue of inconvenience arising from possible fragmentation of proceedings. Appropriate directions can be made to conduct litigation to avoid what are perceived injustices (in having to attend the whole of the hearing) by the Second to the Thirteenth Respondents.
17. In paragraph 9 I make the determination that this matter is being adjourned because of the stay application and not for anything to do with the joinder application.
18. It seems to me late service of the stay application has brought this about.

19. Consequently it seems to me that s109(3) (a)(iv) is attracted – causing an adjournment.
20. I propose to exercise my discretion to order that the Applicants’ costs of this day be paid by the Second to the Thirteenth Respondents. I shall make appropriate directions.
21. All other costs I reserve as I am satisfied it is fair to do so.

SENIOR MEMBER D. CREMEAN