

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDINGLIST**

VCAT REFERENCE NO. D633/2009

**CATCHWORDS**

Costs of directions hearing and compulsory conference, provision of documents in electronic form

<b>APPLICANT</b>	Civic Home Improvements (VIC) Pty Ltd (ACN 078 746 791)
<b>RESPONDENT</b>	Amy Orders
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member M. Lothian
<b>HEARING TYPE</b>	Compulsory Conference
<b>DATE OF HEARING</b>	22 June 2010
<b>DATE OF ORDER</b>	1 July 2010
<b>CITATION</b>	Civic Home Improvements (VIC) Pty Ltd v Orders (Domestic Building) [2010] VCAT 1127

**ORDER**

I decline to make any specific orders for costs arising out of the directions hearing of 18 June 2010 and the compulsory conference of 22 June 2010. The costs of both occasions are reserved.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

For Applicant	Mr P. Hayes of Counsel
For Respondent	Ms A. Orders in person

## REASONS

- 1 On 22 June 2010, following a compulsory conference, I made directions for the further conduct of the proceeding. Order 5 is:

The costs of the [directions] hearing of 18 June 2010 and of today's compulsory conference are reserved for further consideration by me taking into account the actual words said on 18 June 2010.
- 2 On 18 June 2010 there was a directions hearing to consider various matters raised by the parties. It was arranged urgently, to enable the compulsory conference of 22 June 2010 to proceed.
- 3 One of the issues before me at the directions hearing was that both parties stated they had not received documents from the other that were to be served by the Applicant by 8 June 2010 and by the Respondent by 15 June 2010. The Tribunal had received both sets of documents. Orders were made that the Respondent attend the office of the Applicant's solicitors that afternoon, to exchange a further set of documents.
- 4 Before the commencement of the compulsory conference on 22 June 2010 the Respondent informed the Tribunal that she had discovered that the Applicant's documents were at a post office near her home. However she had also said at the directions hearing that she had never received a card from Australia Post notifying her that there was a parcel for her to collect, and I have no reason to disbelieve her.
- 5 I also have no reason to disbelieve the Respondent when she said that she posted sets of documents to both the Tribunal and the Applicant. The Tribunal set arrived in an envelope marked "damaged" by the Tribunal, and as I remarked in the directions hearing, if the set to the Applicant suffered a similar fate, it might have been undeliverable.

## COSTS OF THE COMPULSORY CONFERENCE

- 6 Mr Hayes of Counsel for the Applicant complained that the set of documents delivered to his instructing solicitor by the Respondent was in the form of a computer disk, rather than being in paper form. He submitted that this was a failure to comply with the directions of 18 June, which required the parties to "exchange further sets of documents" and claimed costs thrown away by virtue of the alleged non-compliance. As my memory of the discussions of 18 June was imperfect, I reserved the question of costs to enable me to listed to the recording of the directions hearing.
- 7 Having listened to the recording, I note that the possibility of the Respondent providing the documents in electronic form was discussed and Mr Hayes responded, in answer to my question:

Would that be good for you, Mr Hayes?

saying:

Well yes, but do you have photos scanned?

Which the Respondent confirmed she had.

- 8 The Respondent then asked if she could burn the documents on a CD and send it, to which Mr Hayes appears to have said yes. There was then discussion about the need to exchange documents urgently.
- 9 I conclude that there might have been a gap of understanding between the parties about what it was that the Respondent was going to do, but it was not unreasonable for her to conclude that providing a CD with all the documents on it was a valid way to fulfil the orders.
- 10 Having regard to s109 of the *Victorian Civil and Administrative Tribunal Act 1998*, the Applicant has provided no basis for me to do other than reserve costs of the directions hearing of 18 June 2010 and the compulsory conference of 22 June 2010.

**SENIOR MEMBER M. LOTHIAN**