

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D499/2006

**CATCHWORDS**

Domestic building – proceedings on Counterclaim only – damages, interest and costs.

<b>APPLICANT</b>	Classic Period Homes Pty Ltd (ACN: 096 046 105)
<b>RESPONDENTS</b>	Colin Pearce, Merryn Pearce
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member D. Cremean
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	17 October 2007
<b>DATE OF ORDER</b>	17 October 2007
<b>CITATION</b>	Classic Period Homes Pty Ltd v Pearce(Domestic Building) [2007] VCAT 1966

**ORDER**

- 1 Order the Applicant to pay the sum of \$63,666.00 to the Respondents (judgment on the Counterclaim) with \$7,639.92 interest.
- 2 Order the Applicant to pay the Respondents' costs which I fix in the sum of \$88,265.65.

**SENIOR MEMBER D. CREMEAN**

**APPEARANCES:**

For the Applicant	No appearance
For the Respondents	Mr A. Kincaid of Counsel

## REASONS

- 1 I refer to the orders made on 23 August 2007 where the Applicant and the Respondents were represented.
- 2 I refer also to the order made in Chambers on 3 October 2007.
- 3 I am satisfied the order made on 3 October 2007 was served on the Applicant via Mr Thexton's office on 5 October 2007. At that point, my understanding is he was still the solicitor on record.
- 4 I am satisfied the Applicant therefore has been notified of these proceedings but has failed to attend or be represented.
- 5 I am satisfied further that the Applicant has failed to comply with paragraph 1 of the orders made on 23 August 2007 by reason of which the Counterclaim stands determined in favour of the Respondents by virtue of paragraph 2 of those orders.
- 6 Accordingly only the questions of quantum, interest and costs arise on this occasion.
- 7 I note the Respondents abandon relief in paragraph 16A of the Counterclaim.
- 8 Having heard affirmed evidence from Mr Pearce (who appears also on behalf of his wife who is ill) I am satisfied it is fair that the Tribunal should proceed to determine the matters referred to in paragraph 7 in any event and should not delay in doing so.
- 9 There is no claim of the Applicant before me, it having been dismissed on 27 June 2007.
- 10 Having heard Mr Pearce's affirmed evidence and that of Mr Croucher in his Buildspect Report dated 30 January 2007 (the evidence of both of whom I accept without question) I am satisfied I should order the cost of repairs/rectification in favour of the Respondents in the sum of \$58,066.00.
- 11 Further, considering Mr Pearce's evidence, I am satisfied a figure for inconvenience (including living in a shed) and disappointment should be allowed by me which I assess at \$5,000.00 (being \$2,500.00 for Mr Pearce and \$2,500.00 for Mrs Pearce).
- 12 Further again, considering this evidence I allow a sum of \$600.00 for lost rental.
- 13 All up, therefore, I allow as damages the sum of \$63,666.00 which I order the Applicant to pay to the Respondents on the Counterclaim.
- 14 I allow interest on such figure of \$7,639.92 being calculated from the date of filing of the Counterclaim.
- 15 I entertain the Respondents' application for costs made under s109 of the *Victorian Civil and Administrative Tribunal Act 1998*.

- 16 I have regard to the written submissions handed to me.
- 17 I am satisfied, having regard to the matters advanced (including the matters in such submissions and to the detail in the chronology and Mr Pearce's evidence and Mr Croucher's evidence) that it is fair to depart from s109(1) acting under s109(2). I am satisfied it is fair to do so having regard to s109(3).
- 18 I have been provided with helpful assistance and am in a position to fix costs myself this day.
- 19 I consider I should do so on an indemnity basis – the facts of this case are quite extraordinary and exceptional as detailed in the matters raised with me.
- 20 The Applicant has subjected the Respondents to serious unnecessary disadvantage and has behaved unconscionably in a number of ways.
- 21 I order the Applicant to pay the costs of the Respondents which I fix at \$88,265.65, such sum includes – legal costs (\$71,425.00); expenses of Mr Davey (\$13,762.45); costs of reports (\$2,964.70) and hearing fee (\$113.50).
- 22 I order accordingly.

**SENIOR MEMBER D. CREMEAN**