

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D232/2005

CATCHWORDS

Summons to appear, fees and allowances to the person answering the summons, s104 of the *Victorian Civil and Administrative Tribunal Act 1998*, entitlement to payment, amount of payment, business hours lost, conduct money.

APPLICANT	Hoang Tran Investments Pty Ltd (ACN 007 229 656)
FIRST RESPONDENT	2M'S Constructions Pty Ltd (ACN 109 705 348)
SECOND RESPONDENT	Mamas Toumazou
THIRD RESPONDENT	Bullion Holdings Pty Ltd (ACN 095 929 945)
FOURTH RESPONDENT	Elisa Martine Steel
WHERE HELD	Melbourne
BEFORE	Senior Member M. Lothian
HEARING TYPE	Directions Hearing
DATE OF HEARING	9 June 2006
DATE OF ORDER	22 June 2006

[2006] VCAT 1210

ORDER

1. The First Respondent must pay to Mr Keflianos of Jempz Pty Ltd his reasonable fees and allowances being \$1,015.00. Payment must be made forthwith.
2. Direct the Principal Registrar to forward a copy of this order to Mr Keflianos of Jempz Pty Ltd, Level 2, West Tower, 608 St Kilda Road, Melbourne, 3004.

SENIOR MEMBER M. LOTHIAN

APPEARANCES:

For the Applicant	Mr M. Telford, Solicitor
For the First Respondent	Mr J. Forrest of Counsel
For the Second Respondent	Mr T. Pikusa of Counsel
For the Third Respondent	Mr P. Franzese, Solicitor
For the Fourth Respondent	Mr P. Franzese, Solicitor

REASONS

1. On 9 June 2006, Mr Keflianos of Jempz Pty Ltd attended the Tribunal with documents in obedience to a summons issued at the request of the First Respondent on 2 June 2006.
2. At the directions hearing Mr Keflianos sought his actual and opportunity costs of attending, being photocopying disbursements of \$72.00 and his usual charge-out rate of \$350.00 per hour for three and a half hours, from 8.30 a.m. until 1.00 p.m. The total sought, including GST on Mr Keflianos' time, was \$1,812.00. It is noted that the hearing of this matter was extensive and the time claimed by Mr Keflianos probably represents the time devoted to it by him, including travel time. Similarly, I had no reason to doubt that his usual charge-out rate was in the region of \$350.00 per hour. It was alleged by the First Respondent that Jempz Pty Ltd provide accountancy services.
3. The First Respondent challenged neither his hourly rate nor the photocopying charges.
4. I reserved my decision concerning what, if any amount would be allowed to Mr Keflianos for fees and/or allowances.
5. On 15 June Mr Keflianos appeared again briefly in response to the summons issued at my direction on 13 June 2006. He made no additional claim for that appearance.
6. Mr Forrest for the First Respondent argued that in accordance with the decision of Judge Bowman in *State of Victoria v Bradto Pty Ltd and*

Tymbook Pty Ltd [2006] VCAT 685, costs under section 104 are outside the Tribunal's jurisdiction.

7. Section 104(4) and (5) provide:

“(4) A person who attends in answer to a summons is entitled to be paid the prescribed fees and allowances or, if no fees and allowances are prescribed, the fees and allowances (if any) determined by the Tribunal.

(5) The fees and allowances are to be paid -

- (a) if the person was summoned at the request of a party, by that party; or
- (b) if the person was summoned on the initiative of the Tribunal, by the parties in the proportion determined by the Tribunal.”

8. No fees and allowances are prescribed.

9. Judge Bowman's decision dealt with an application for legal costs by non-parties answering a summons, rather than for “fees and allowances”. He said at paragraphs 42 and 43:

“42. Of course, the wording contained in s.104(4) of the Act is “fees and allowances”. To my mind, this falls a long way short of “expense or loss substantially exceeding the amount of any conduct money given”. Therefore it also falls a long way short of empowering the Tribunal to order the payment of legal costs in the manner in which Byrne J determined he was so empowered in *Pyramid Building Society*.

43. It is worth noting that the type of orders made by this Tribunal pursuant to s.104(4) in the past dealt with such “fees and allowances” as the cost of attending court, loss of private business time, and car parking – see *Re Darnos and Yarra CC* [2003] VCAT 1462 and *Re Roberts and Monash CC* [2002] VCAT 129. To my mind, it is expenditure of that type which is countenanced by s.104(4). Legal costs do not fall within it.”

10. There is no evidence to indicate that either Mr Keflianos or Jempz Pty Ltd are other than strangers to this proceeding. Further, Mr Keflianos has acted appropriately and promptly. In enacting section 104(4), Parliament contemplated that it is appropriate in some circumstances that an amount be paid to those answering a summons. I find that it is fair and reasonable that

Mr Keflianos receive some payment for his attendance in answer to the summons.

Amount of payment

11. In *Darmos v Yarra CC* [2003] VCAT 1462 it was ordered that a solicitor obeying a summons be paid \$150.00 for her time. In *Roberts v Monash CC* [2002] VCAT 129 it was ordered that the Mayor of the City of Monash be paid \$238.00. Member Baird said:

“37. I consider that the fair and reasonable costs for Cr Morrissey's attendance relate to the loss of private business time (\$220) and car parking (being \$28 less \$10 which was said to have already been made available to Cr Morrissey). I do not consider time in attendance to be reasonable, as Cr Morrissey indicated he would seek reimbursement through the Council in association with his role as Mayor.”

12. Judge Bowman's decision makes reference to loss of private business time and the costs of attendance. Mr Keflianos was present at the Tribunal for approximately two and a half hours, which is found in this proceeding to be a reasonable assessment of the loss of business hours. The First Respondent must pay two and a half hours at \$350.00 per hour, being \$875.00 plus GST of \$88.00, plus the \$72.00 claimed. Conduct money of \$20.00 has been paid to Mr Keflianos, which is deducted. The First Respondent must therefore pay Mr Keflianos \$1,015.00 forthwith.

SENIOR MEMBER M. LOTHIAN