

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D750/2004

CATCHWORDS

Domestic building – joinder of parties – whether “open and arguable” to orders joinder.

APPLICANT	George Iliopoulos, Despina Iliopoulos
FIRST RESPONDENT	Housing Guarantee Fund Ltd
SECOND RESPONDENT	Archsign Pty Ltd (ACN 007 067 709)
THIRD RESPONDENT	Translane Pty Ltd (ACN 007 401 363)
FOURTH RESPONDENT	PBC Shell Pty Ltd (ACN 066 846 713)
FIFTH RESPONDENT	Aleks Kulesza
WHERE HELD	Melbourne
BEFORE	Senior Member D. Cremean
HEARING TYPE	Directions Hearing
DATE OF HEARING	24 February 2006
DATE OF ORDER	24 February 2006
	[2006] VCAT 290

ORDER

1. I join as a party to these proceedings (respectively as Sixth and Seventh Respondents) Davin Slade and David Alkemade.
2. The joinder of Davin Slade shall stand revoked if the Applicants’ Solicitors do not file an affidavit of service by 4.00 p.m. on 3 March 2006.
3. I direct this matter be listed for directions before any member (Senior Member Walker if available) on a convenient date.
4. Reserve costs.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

For the Applicants	Mr D Pumpa of Counsel
For the Respondents	Mr A Fung, Solicitor
For the Second Respondent	Mr M Attard, Solicitor
For the Third Respondent	No appearance
For the Fourth Respondent	Mr R Lee, Solicitor
For the Fifth Respondent	Mr R Lee, Solicitor
For the Proposed Sixth Respondent	In person
For the Proposed Seventh Respondent	Ms N Connell, Solicitor
For the Proposed Eighth Respondent	Ms N Connell, Solicitor

REASONS

1. Application is made by the Applicants to join the following as parties to this proceeding – Davin Slade, David Alkemade, Karin Schwab.
2. The application is not opposed by any current Respondent.
3. It is opposed by the proposed joined parties.
4. I have had due regard to the Affidavits to which my attention has been directed.
5. The width of s60 of the *Victorian Civil and Administrative Tribunal Act* 1998 is well established. In applying the provision it is sufficient if a case sought to be raised against a proposed joined party is “open and arguable”. See observations of Cummins J. in *Zervos v Perpetual Nominees Ltd* [2005] VSC 380.
6. I am satisfied on the materials that the case is open and arguable against the proposed Sixth and Seventh Respondent. I am not satisfied on the materials that it is so, against the proposed Eighth Respondent (Karin Schwab).
7. Subject to what I have yet to say I order that Davin Slade and David Alkemade be joined as Sixth and Seventh Respondents.

8. The joinder of Davin Slade shall stand revoked if by 4.00 p.m. on 3 March 2006 the Solicitors for the Applicants has not duly filed an affidavit of service. Should they fail to do so, David Alkemade shall remain joined but as Sixth Respondent only.
9. I reserve costs.
10. I decline to order costs in favour of the proposed Karin Schwab as she has not been joined as a party: s109 in my view relates to costs orders against a party.

SENIOR MEMBER D. CREMEAN