

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D705/2004

CATCHWORDS

Domestic building – separate question – resisting orders made – adjournment – self-represented person - illness

FIRST APPLICANT	Roger William Johnston
SECOND APPLICANT	Elizabeth Ann Johnston
FIRST RESPONDENT	Victorian Managed Insurance Authority
SECOND RESPONDENT	Paul Pavlovski
THIRD RESPONDENT	Banyule City Council
FOURTH RESPONDENT	Mornington Peninsula Shire Council
FIFTH RESPONDENT	Craig Matheson
SIXTH RESPONDENT	Elmant Pty Ltd (ACN 077 561 276)
SEVENTH RESPONDENT	George Kotefski
EIGHTH RESPONDENT	Tyrone Diskin
NINTH RESPONDENT	John Conquest
JOINED PARTY 1	Mara Pavolvski
JOINED PARTY 2	Ilieva Pty Ltd (ACN 082 391 357)
WHERE HELD	Melbourne
BEFORE	Senior Member D. Cremean
HEARING TYPE	Directions Hearing
DATE OF HEARING	5 August 2008
DATE OF ORDER	5 August 2008
CITATION	Johnston v Victorian Managed Insurance Authority & Ors (Domestic Building) [2008] VCAT 1614

ORDER

- 1 **I adjourn this matter part-heard before me to 28 August 2008 commencing at 10.00 a.m. at 55 King Street Melbourne. Allow 1 day only. If this date is not convenient for a party they must notify the Principal Registrar and the other parties in writing. Thereafter the Principal Registrar I direct must liaise with the parties to arrange another suitable date.**
- 2 As to the orders made on 26 May 2008 I extend those in paragraphs 1-3 of the same (both inclusive) until the outcome of the further hearing of this matter is known.
- 3 I direct that the order in 2 may be served, as a matter of urgency, by facsimile or telephone.
- 4 Costs reserved.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

For the Applicants	Mr A. Monichino of Counsel
For the First Respondent	Mr M. Roberts of Counsel
For the Second Respondent	In person
For the Third Respondent	No appearance
For the Fourth Respondent	No appearance
For the Fifth Respondent	No appearance
For the Sixth Respondent	By its director(s)
For the Seventh Respondent	In Person
For the Eighth Respondent	In person
For the Ninth Respondent	Mr M. Attard, Solicitor
For Joined Party 1	No appearance
For Joined Party 2	No appearance

REASONS

- 1 This matter has been set down for hearing this day (and tomorrow) for some months. I last confirmed the hearing date on 25 June 2008.
- 2 The Applicants and the First Respondent are represented by Counsel. The Ninth Respondent was legally represented but the matter, as it involves him, has been resolved.
- 3 The Third, Fourth and Fifth Respondents are now out of the proceedings.
- 4 There remains the Second Respondent and the Sixth, Seventh and Eighth Respondents. The Sixth Respondent is a company. There are also Joined Parties.
- 5 This matter has been going on for a very long time. The claim is a very large one – for well over \$1 million.
- 6 The purpose of today's proceeding was to determine a preliminary question. That question in substance relates to purported Terms of Settlement.
- 7 I do not make any finding that it is no longer necessary for me to determine that question. I have not heard all submissions.
- 8 It has been necessary, however, to adjourn today's proceedings.
- 9 The Applicants wish to continue their proceedings against Mr Pavloski, the Second Respondent. However, Mr Pavloski is not well – and visibly so, to my mind. He is taking medication he says for a severe back condition he attributes to the time when he worked as a crowd controller. He certainly appeared to be in severe pain. I have asked him to produce a medical certificate.
- 10 Accepting what he says, as I do, Mr Pavloski is not, in my view, in a position to proceed today. Moreover, he only became aware of critical documentation yesterday. He says he has not read it and is too ill to do so. Mr Pavloski is self-represented.
- 11 I consider it would be very unfair to require the matter to proceed. It is true Mr Pavloski did not ask, at the commencement of today's proceedings, for the matter to be adjourned. But he is not a lawyer used to court or tribunal formalities and I am not troubled by this.
- 12 I have regard to ss97 and 98 of the *Victorian Civil and Administrative Tribunal Act 1998* to adjourn the matter. Adjournment is not opposed by any other Respondent. I rely upon the decision of the High Court in *Queensland v J L Holdings (1997)* 189 CLR 146 referring to justice as being the “paramount” consideration.
- 13 I also have regard to the principles discussed by Bell J in *Tomasevic v Travaglini [2007]* VSC 337.
- 14 In accordance with those principles, as I see them, and following a suggestion by Counsel, I informed Mr Pavloski that he should approach the

Victorian Bar or the Law Institute for possible pro bono assistance. He tells me, he cannot afford a lawyer. I have no reason to disbelieve him.

- 15 I consider he is in need of urgent legal help. He is facing a major civil action. This applies also to Mr Diskin – the Eighth Respondent. I expect also it applies to the Sixth Respondent – but that is a company as I have noted. Nonetheless it, too, is not legally represented at this point and is being sued.
- 16 In the meantime I have made orders preserving the status quo as regards the asset preservation orders granted by Senior Member Walker on 26 May 2008.
- 17 I have also reserved costs.

SENIOR MEMBER D. CREMEAN