

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D683/2005

**CATCHWORDS**

|                      |                                    |
|----------------------|------------------------------------|
| <b>APPLICANTS</b>    | Dean Pieterse, Sandra Pieterse     |
| <b>RESPONDENT</b>    | A V Jennings Ltd (ACN 004 601 503) |
| <b>WHERE HELD</b>    | Melbourne                          |
| <b>BEFORE</b>        | Member M. Walsh                    |
| <b>HEARING TYPE</b>  | In Chambers                        |
| <b>DATE OF ORDER</b> | 22 June, 2006                      |
| [2006] VCAT 1211     |                                    |

**ORDER**

1. Pursuant to Section 119 of the *Victorian Civil and Administrative Tribunal Act* 1998, the Tribunal makes the following amending order of its own initiative.
2. The order made by the Tribunal on 13 April 2005 contained an error arising from an accidental slip in that in order 7 there was omitted before the words 'Costs reserved' the words 'Application for costs by the Applicant refused' and the word 'otherwise' should have been inserted between 'Costs' and 'reserved'.
3. And the Tribunal orders that in the order:

There be included before the words 'Costs reserved' the words 'Application for costs by the Applicant refused' and that the word 'otherwise' be inserted between 'Costs' and 'reserved'.

**MEMBER M. WALSH**

**APPEARANCES:**

For the Applicants

Mr M. Champion, Solicitor

For the Respondent

Mr J. Sharkie, Solicitor

## REASONS

1. The proceeding conducted by me on 13 April 2006 was a compulsory conference, convened and conducted pursuant to the provisions of the *Victorian Civil and Administrative Tribunal Act 1998* with the purpose-dictated by that Act, amongst other things, ‘to promote a settlement of the proceeding’.
2. With a view to maximising the likely effectiveness of the conference and as authorised by the Act, Senior Member Lothian made the following order in a Directions Hearing on 8 December 2005:
  7. Unless the Tribunal directs otherwise, each of the parties must attend the conference personally or, in the case of a company, by a representative who has unlimited authority to settle. Costs may be ordered if a party’s representative does not have unlimited authority to settle, or where a party refuses to negotiate in good faith at the compulsory conference”.
3. At the commencement of the conference, in accordance with my usual practice, I enquired of the Respondent which is a company whether its representative Mr Jenner, Building Manager, had unlimited authority to settle. I was assured that this was so.
4. At the conclusion of the conference which did not achieve settlement of the proceeding and in the course of giving further directions as required by the Act, the Applicant’s solicitor applied for a costs order to be made in its

favour against the Respondent on the basis that the Respondent company's representative did not have unlimited authority to settle. Aspects of the negotiating pattern were also raised but the costs application was raised on the basis indicated.

5. I listened to the submission of the Applicants' solicitor and considered that there was a reasonable basis for it. With a view to determining the costs application, various proposed courses of action were put to me.
6. In the result, I determined that the most appropriate course was, in accordance with the powers conferred on me by Section 98 of the *Victorian Civil and Administrative Tribunal Act 1998*, to take sworn evidence from Mr Jenner himself.
7. Accordingly, I swore in Mr Jenner who gave evidence on oath that he had unlimited authority to settle. Following brief cross-examination from the Applicants' solicitor, I accepted that evidence on the balance of probabilities and refused the Applicants' application for costs.

**MEMBER M. WALSH**