

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D299/2006

**CATCHWORDS**

Domestic building – extension of time – factors of relevance.

<b>APPLICANT</b>	Mark Rees
<b>FIRST RESPONDENT</b>	Vero Insurance Ltd (ACN 005 297 807)
<b>SECOND RESPONDENT</b>	Onley Constructions Victoria Pty Ltd (ACN 073 488 258)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Melbourne
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	30 January 2007
<b>DATE OF ORDER</b>	31 January 2007
<b>CITATION</b>	Rees v Vero Insurance Ltd (Domestic Building) [2007] VCAT 126

**ORDER**

- 1 I extend time as sought.
- 2 **I adjourn to a directions hearing in due course.**
- 3 I reserve costs.

**SENIOR MEMBER D. CREMEAN**

**APPEARANCES:**

For the Applicant	Mr P. Duggan of Counsel
For the First Respondent	Ms R. Gorenstein, Solicitor

## REASONS

- 1 Application is made to extend time under s126 of the *Victorian Civil and Administrative Tribunal Act* 1998 in accordance with directions of Senior Member Walker made on 21 November 2006. By that provision:
  - (1) The Tribunal, on application by any person or on its own initiative, may extend any time limit fixed by or under an enabling enactment for the commencement of a proceeding.
  - (2) If the rules permit, the Tribunal, on application by a party or on its own initiative, may—
    - (a) extend or abridge any time limit fixed by or under this Act, the regulations, the rules or a relevant enactment for the doing of any act in a proceeding; or
    - (b) waive compliance with any procedural requirement, other than a time limit that the Tribunal does not have power to extend or abridge.
  - (3) The Tribunal may extend time or waive compliance under this section even if the time or period for compliance had expired before an application for extension or waiver was made.
  - (4) The Tribunal may not extend or abridge time or waive compliance if to do so would cause any prejudice or detriment to a party or potential party that cannot be remedied by an appropriate order for costs or damages.
  - (5) In this section—

**"relevant enactment"** means an enactment specified in the rules to be a relevant enactment for the purposes of this section.
- 2 Reliance is placed on affidavit material including the affidavit of Lori Fairclough re-sworn 20 December 2006 and that of Peter Onley re-sworn 18 January 2007.
- 3 There is also an affidavit in reply of Lance Guymer sworn 25 January 2007.
- 4 Where there is conflict between the affidavits as to matters of fact I am unable to resolve such conflict(s) without having heard from the deponents in cross-examination. And that, of course, has not taken place.
- 5 The First Respondent neither consents to nor opposes the application.
- 6 The Second Respondent, I note, was joined to the proceedings by the Applicant. I consider that a factor of some significance.
- 7 It is the Applicant who is opposing the extension of time sought by the Second Respondent. It is that party only which is expressing its opposition.

- 8 I am aware of the authorities on s126. The provision gives an unfettered discretion (to be guided, in its exercise, however by such authorities).
- 9 I am satisfied, for the reasons advanced by the Second Respondent, that it would be unfair not to extend time in this case. There is a dispute already before the Tribunal and it is important that all matters in dispute be resolved at the one time. The Second Respondent, having been joined by the Applicant, should be able to participate meaningfully in the proceedings.
- 10 It does not seem fair to me that the Applicant should now be seeking, in effect, to prevent the Second Respondent from responding, when it was the Applicant who joined the Second Respondent in the first place. I cannot see any significant prejudice to the Applicant in reality in extending time. It is true that the decision occurred quite some time ago but length of time is not necessarily a determinant. I rely upon the concession, in that regard, fairly made by the Applicant as regards quantum on the tiles. I also rely upon s53(1) of the *Domestic Building Contracts Act 1995* which provides I may make any order I consider fair to resolve a domestic building dispute. And I rely upon ss97 and 98 of the 1998 Act, as well.
- 11 I extend time accordingly.
- 12 Having done so, I adjourn off to a directions hearing in due course.
- 13 I reserve costs. Without being able to determine the question of refusal of access (because I only have competing affidavits before me) I cannot order anyone, at present, to pay costs.

**SENIOR MEMBER D. CREMEAN**