

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT Reference: BP1292/2015

CATCHWORDS

Real Property – Co-ownership – Funds from co-owned property dispersed – no jurisdiction pursuant to Co-ownership legislation – *Property Law Act 1958* Part IV

APPLICANT: Ms Leyla Sengul Riffat

FIRST RESPONDENT: Mr Marley Dean Riffat

SECOND RESPONDENT: Mrs Melek Riffat

THIRD RESPONDENT: Estate of Tanyol Denizer Riffat (deceased)

OTHER PARTIES: Mrs Nevin Saathoff
Mr Muhammed Altan Riffat
Mr Taner Yilmaz Riffat

WHERE HELD: Melbourne

BEFORE: Senior Member Robert Davis

HEARING TYPE: Hearing

DATE OF HEARING: 24 June 2016

DATE OF ORDER: 24 June 2016

DATE OF WRITTEN REASONS: 22 August 2016

CITATION: Riffat v Riffat (Building and Property) [2016] VCAT 1398

ORDER

The proceeding is dismissed.

SENIOR MEMBER ROBERT DAVIS

APPEARANCES:

For the Applicant:	Ms L. Riffat in person
For the First Respondent:	Mr M. Riffat in person
For the Second Respondent:	Ms N. Burgess, Solicitor
For the Third Respondent:	Mr M. Riffat in person
For Second Other Party:	No appearance
For Third Other Party:	Mr A. Riffat in person
For Fourth Other Party:	No appearance

Note:

These written reasons consist of an edited transcription of reasons given orally at the conclusion of the hearing.

REASONS

Application

- 1 I have before me an application that has been brought pursuant to the Co-ownership provisions of the *Property Law Act 1958* (the **Act**). The property in question was situated at 31 Birchwood Boulevard, Deer Park (the **Property**).
- 2 The property was gifted to five people including the applicant and Tanyol Riffat, who is now deceased. At all relevant times Marley Riffat was the executor of the estate of the late Tanyol Riffat. The applicant's mother, Melek Riffat, is also being joined to this proceeding as have another of other people. It is against Marley and Melek that the applicant is seeking her damages. The damages she seeks are the cost of her loan that she needed to take out because she was involved in court proceedings in the County Court with other members of her family.
- 3 The applicant says that in about December 2014 she contacted the other co-owners and asked them if they would agree to the sale of the property. They all agreed except for the estate of Tanyol Riffat, of whom Marley was the executor. Apparently Marley was at that time living at the property. The applicant said that Marley had no right to be living in the property. The fact is, that he was the executor of a co-owner and as such was "standing in the shoes" of the co-owner and a co-owner has the right to occupy a property. Therefore he appears to have had right to occupy the property. The applicant claims that the three other co-owners and herself all agreed that the property should be sold in or around December 2014. Apparently Marley Riffat would not agree and the applicant says that she had difficulty contacting him.
- 4 For reasons which I do not quite understand, it was not until September 2015 that proceedings were brought in this Tribunal pursuant to the Co-ownership provisions of the *Property Law Act* seeking an Order for sale of the property. The Tribunal could not deal with the matter until at least 24 December because that was when a fee waiver was granted. The matter came on for directions in March of 2016, this year, and at that point the property was either sold or about to be sold and it had been agreed that the distribution from the property would be equal amongst the co-owners.
- 5 It is in these circumstances that the applicant has filed an Amended Points of Claim. She gives the history of the matter and complains that she had to spend legal costs which are basically the filing of this application for \$375 and loan costs of \$5,277.84. She also deals with the loan application fee and loan insurance. She said that she had a reduction in her disposable

income as a result of all these matters and she thus claims a total of \$5,277.84. There has been application made by the respondents in this matter, prior to hearing evidence, that the application be dismissed for want of jurisdiction.

- 6 Division 2 of the Co-ownership provisions provides at s.225 that an application can be made for the division and sale of a property. For reasons which I do not understand, as already mentioned, the applicant did not make that application as early as she could have which would probably have avoided the money which she spent. The applicant also relies on s.228 of the Act which she said deals with the “just and fair division of the property”. At this point that would seem to be that events have overtaken that matter because the property has been sold and the proceeds have been distributed.
- 7 The only other provisions that I could find that might be relevant in this proceeding was in s.233(2)(d) which states:

233(2)(d) In determining to make an order under ss(1) which is an accounting provision VCAT may take into account the following:

Damages caused by unreasonable use of the land or goods by a co-owner.

The applicant said that Marley used the land and that it was unreasonable that he should stay there. That cannot be a proper point because he was “standing in the shoes” of the co-owner and he was entitled to stay there. She further says that she suffered damage because he would not agree to the sale of the property. In my view, he has no obligation to agree to the sale of the property. What the applicant could have done was to make the application to this Tribunal earlier and, at that stage, the Tribunal would have undoubtedly made an order for the sale of the property and the applicant would not have suffered the problem.

- 8 In view of these factors it seems to me that this Tribunal has no jurisdiction to deal with the application at all. I also note that the applicant has referred to s.274 of the Act. However that section has no relevance to this proceeding as it deals with life ownership. There was no life entitlement ownership in this particular property. Given those circumstances in my view the application must be dismissed because there is no jurisdiction in this Tribunal.
- 9 The order will be that the proceeding is dismissed.

Robert Davis
Senior Member