

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

domestic building LIST	vcat reference No. D916/2006
CATCHWORDS	
Costs, Provision of documents incorporated by reference into the Points of Claim.	

APPLICANT	Seachange Management Pty Ltd (ACN 091 443 211)
FIRST RESPONDENT	Bevnol Constructions & Developments Pty Ltd (ACN 079 170 577)
SECOND respondent to counterclaim	Guisepe De Simone
THIRD RESPONDENT TO COUNTERCLAIM	Paul Marc Custodians Pty Ltd (ACN 110 485 982) formerly known as Paul Marc Management Pty Ltd
FOURTH RESPONDENT TO COUNTERCLAIM	Martin Jurblum
WHERE HELD	Melbourne
BEFORE	Senior Member R. Young
HEARING TYPE	Reasons
DATE OF REASONS	6 September 2007
CITATION	Seachange Management Pty Ltd v Bevnol Constructions & Developments Pty Ltd (Domestic Building) [2007] VCAT 1907

Reasons

- 1 As requested by the solicitor for the applicant in his letter of 12 July 2007, which was mislaid by the Tribunal, I set out below the reasons for the decisions I made at the Directions Hearing of 6 July 2007; acknowledging that at the solicitor's request I have previously provided reasons for the refusal of the adjournment application of Mr De Simone in Order 2. I set these reasons out dealing with each order in turn. Order 1 was made at the request of the parties.
- 2 The procedural orders requiring the filing and serving of affidavits in Orders 3 and 4 were made with the consent of the parties. In relation to Order 5, these documents were expressly referred to in the Amended

Points of Claim and as such I consider the respondent is entitled, under the rules of natural justice, to require access to such documents. Order 6 was procedural.

- 3 Likewise under Order 7 the document, being photographs of Building Surveying Design Group, was referred to in the applicant's Amended Points of Claim. Orders 8 and 9 are procedural orders dealing with the provision of such photographs to the respondent.
- 4 Order 10 was agreed between the parties.
- 5 Order 11 which required the applicant to pay the first respondent's costs of one half a day of the Directions Hearing. I ordered such costs against the Applicant because it supported the application for an adjournment of Mr De Simone and Mr De Simone is the sole director of the applicant company; however, he was not at this directions hearing a party to this proceeding. The adjournment Mr De Simone sought was the adjournment of all matters to be raised between the parties on the day on the basis that he was ill and could not provide instructions as to affidavit material with which to oppose his joinder and the other application made by the respondent. The hearing of the adjudication application took more than one half a day and can be seen from my reasons of 31 May 2007 I did not consider that Mr De Simone put forward grounds that had any merit whatsoever in relation to his need to provide further evidence in relation to the documents being sought by the respondent or its Request for Further and Better Particulars.
- 6 In relation to his claim that he couldn't prepare the proper affidavit material in relation to his joinder; Mr De Simone states in his email to the Tribunal of 4 July 2007 that he intended to prepare this material on the next weekend and have it submitted to the Tribunal on Monday 9 July, but that in the interim he had become ill and could not produce the required information.. However, the orders of the Tribunal required these affidavits to be filed and served by 29 June 2007, a date that passed without Mr De Simone having commenced his work on the material. Further, again I re-iterate as set out in my reasons of 23 July 2007, Mr De Simone did not submit any relevant factual material that established he had any cogent factual ground for opposing his joinder. Therefore, I consider that Mr De Simone's application for an adjournment and the Applicant's support of that position unnecessarily prolonged the Directions Hearing to the disadvantage of the respondent; such that, under s109 of the *Victorian Civil and Administrative Tribunal Act 1998* it was fair to order that the Applicant pay the respondent's costs over the time taken to hear the unsuccessful adjournment application.
- 7 In relation to the amount of costs ordered the respondent's barrister

informed me that his brief fee for the day was \$2500.00 and that his instructing solicitor sought \$1500.00 in costs for the preparation of the affidavits, correspondence and appearance at the direction hearing. I consider that a significant amount of the effort in the preparation of the affidavits and the correspondence so I considered that what the respondent's solicitor requested could be significantly reduced. I allowed half the respondent's barrister's daily fee. That concludes my reasons as to decisions made at the Directions Hearing.

SENIOR MEMBER R. YOUNG