

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D831/2006

**CATCHWORDS**

Domestic building – Assed preservation order – requirements.

<b>APPLICANT</b>	Shelcon Pty Ltd (ACN 108 192 392)
<b>RESPONDENTS</b>	Daniel Duhovic, Hasan Erlinoglu
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Senior Member D. Cremean
<b>HEARING TYPE</b>	Directions Hearing
<b>DATE OF HEARING</b>	28 May 2007
<b>DATE OF ORDER</b>	28 May 2007
<b>CITATION</b>	Shelcon v Duhovic (Domestic Building) [2007] VCAT 960

**ORDER**

- 1 Application dismissed.
- 2 Matter remains part-heard before me on 7 June 2007.
- 3 Reserve Respondents' costs.

**SENIOR MEMBER D. CREMEAN**

**APPEARANCES:**

For the Applicant	Mr M. Mackinnon, Independent Counsel and Solicitor
For the Respondents	Mr S. Byrne, Solicitor

## REASONS

- 1 Application is made by the Applicant for urgent *Mareva*-type relief.
- 2 Reliance is placed on affidavits of Salvatore Verduzzo sworn 24 May 2007 and Michael Mackinnon also sworn 24 May 2007.
- 3 The application is opposed.
- 4 I am satisfied the Tribunal has power to grant *Mareva*-type relief under either s123 or under 80 or 97 of the *Victorian Civil and Administrative Tribunal Act 1998* or under s53 of the *Domestic Building Contracts Act 1995*.
- 5 I am not satisfied in this case, however, that such relief should be granted.
- 6 I should indicate my decision to refuse such relief does not in any way effect my open mind regarding the part-heard matter before me due to continue on 7 June 2007.
- 7 The requirements of *Mareva*-type relief have been set out in numerous cases. I refer to *Wise v Icons Worldwide Marketing Pty Ltd* [2000] FCA 1800 a decision of Goldberg J who at paragraph [18] says as follows:

I do not consider that the evidence is such as to warrant an order restraining Mr Shale and Mrs Shale from dealing with the proceeds of the sale of the property. It is important to remember the observation of the majority of the High Court (Gaudron, McHugh, Gummow and Callinan JJ) in *Cardile v LED Builders Pty Ltd* (supra) at 403:

"... the granting of a *Mareva* order is bound to have a significant impact on the property of the person against whom it is made: in a practical sense it operates as a very tight 'negative pledge' species of security over property, to which the contempt sanction is attached. It requires a high degree of caution on the part of a court invited to make an order of that kind. An order lightly or wrongly granted may have a capacity to impair or restrict commerce just as much as one appropriately granted may facilitate and ensure its due conduct."

Their Honours agreed with the tenor of what was said by the New South Wales Court of Appeal in *Friego v Culhaci* (New South Wales Court of Appeal, Mason P, Sheller JA and Sheppard AJA, 17 July 1998, unreported):

*"A mareva injunction ... is a drastic remedy which should not be granted lightly."*

- 8 In my view the evidence in this case falls far short of the requirement that there be a threatened dissipation of assets. There may technically be one—from Respondent to Respondent – but there is nothing to say that this is being done to avoid judgment (should judgment be given to the Applicant).

- 9 Bearing in mind that a *Mareva*-type order “should not be granted lightly” I am of the view that the evidence in support of the application is almost non-existent in the material respects. It is a surmise only – and not a strong one at that. In summary, it relates to fears entertained over what “might” happen.
- 10 The application is ill-founded and must be dismissed.
- 11 I would observe the Applicant cannot be given secured creditor status ahead of judgment – should judgment be in his favour. That occurs only in admiralty in action in rem.

**SENIOR MEMBER D. CREMEAN**