

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NOS. D201/2009 & D220/2009

**CATCHWORDS**

Costs.

<b>APPLICANT</b>	Silkwood Dream Pty Ltd (ACN 094 070 667)
<b>RESPONDENT</b>	Battista Luca
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Member L. Rowland
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	10 September 2010
<b>DATE OF ORDER</b>	15 September 2010
<b>CITATION</b>	<i>Silkwood Dream Pty Ltd v Luca</i> (Domestic Building) [2010] VCAT 1471

**ORDER**

- 1 The applicant, Silkwood Dream Pty Ltd pay to the respondent, Mr Battista Luca costs fixed in the sum of \$4,952.60 forthwith.
- 2 Otherwise there is no order as to costs and each party must bear their own costs of the proceedings.

**MEMBER L. ROWLAND**

**APPEARANCES:**

For the applicant: Mr Matters of Counsel.

For the respondent: Mr Luca in person.

## REASONS

### Background

- 1 On 15 June 2010 (following a 3 day hearing on 19, 20 and 22 April 2010) I found that the applicant builder was entitled to the balance of the contract sum of \$12,662.50 but subject to the respondent owner's counterclaim. I found that the owner was entitled to \$14,149.77 on his counterclaim. The owner initially sought \$250,000.00 for the rebuilding of the house or alternatively, \$94,000.00 for defects and \$3,762.00 damages for delay. The net result was that I ordered the builder to pay the owner \$1,487.27.
- 2 The owner, who is now representing himself, seeks costs of the proceeding.
- 3 The builder, in response to the owner's application contends that there ought to be no order for costs or alternatively, the owner should pay the builders costs.
- 4 In considering any application for costs I must have regard to s 109 of the *Victorian Civil and Administrative Tribunal Act 1998* which provides that each party must bear its own costs of a proceeding unless the tribunal is persuaded it should exercise its discretion under s 109(2) having regard to the matters set out in s 109(3), and then, only if it is satisfied that it is fair to do so. Section 109 provides:

The Tribunal may make an order under sub-section (2) only if satisfied that it is fair to do so, having regard to-

- (a) whether a party has conducted the proceeding in a way that unnecessarily disadvantaged another party to the proceeding by conduct...
  - (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceeding;
  - (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law;
  - (d) the nature and complexity of the proceeding;
  - (e) any other matter the Tribunal considers relevant.
- 5 Having regard to all of the matters submitted by the owner and builder, I find the following matters are most relevant to this application:
    - a) Under s 109(d) that the nature and complexity of the claim by the builder was such that the owner could not have defended the builder's claim without expert consultant reports. Consideration of this matter favours the owner.
    - b) Under s 109(e) that the builder on 14 October 2009 made an offer for each party to walk away and bear their own costs. Although the owner beat the offer by \$1,487.27 (plus costs), the offer was reasonable bearing in mind the final order made in the proceeding. Consideration of this matter favours the builder.

6 The final orders made in this matter were such that the rule under section 109 ought to apply. However, given the nature and complexity of the proceeding, and the fact that the proceeding involved a professional builder it was essential that Mr Luca obtain expert reports. I propose to allow him the cost of his expert reports because in all the circumstances, I think it is fair to do so. In view of the offer of compromise made by the builder in October 2009 I do not allow Mr Luca the experts appearance fees. Otherwise, I find that there should be no order as to costs and that each party must bear their own costs of the proceedings. I allow Mr Luca expert report costs as follows:

Raine and Horne valuation:	\$400.00
Archicentre report costs:	\$1895.00
Philip Morris & Associates report costs:	<u>\$2657.60</u>
<b>Total allowed:</b>	<b>\$4952.60</b>

**MEMBER L. ROWLAND**