

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D71/2009

CATCHWORDS

Domestic Building Contracts Act 1995 – s.119 - amendment of order – order includes reasons – accidental slip or omission

FIRST APPLICANT	Stephen Skec
SECOND APPLICANT	Michelle Skec
RESPONDENT	Henley Arch P/L (ACN 007 316 930)
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	In Chambers
DATE OF ORDER	28 May 2009
CITATION	Skec v Henley Arch Pty Ltd (Domestic Building) (correction order) [2009] VCAT 1921

ORDER

The Tribunal's order in this proceeding of 7 May 2009 is amended by deleting from paragraphs 6, 8 and 9 of the Reasons for Decision the name "Mr Rosenbes" and substituting for that name in paragraphs 8 and 9 the words "the Inspector".

SENIOR MEMBER R. WALKER

REASONS

- 1 This proceeding was determined on 7 May 2009 when the Tribunal ordered that the Respondent pay to the Applicants the sum of \$4,109.00.
- 2 In the course of hearing the matter I had regard to a document entitled "Inspection Summary" setting out the findings of an inspector who had inspected the house on behalf of the Insurer. The document did not on its face identify the inspector but in the reasons for decision I stated that it was a well known expert, Mr Rosenbes.
- 3 I cannot recall the evidence that was given in this regard and I did not retain all the documents but I am now satisfied that Mr Rosenbes was not the expert who inspected the house.
- 4 By s, 119 of the *Domestic Building Contracts Act 1995* the Tribunal is empowered of its own motion to correct any accidental slip or omission made in an order. The relevant parts of the section are as follows:
"119. Correcting mistakes
(1) The Tribunal may correct an order made by it if the order contains-
.....
(b) an error arising from an accidental slip or omission; or
.....
(2) The correction may be made-
(a) on the Tribunal's own initiative; "
- 5 By s.117(6) of the Act, the reasons given for decision form part of the order.
- 6 The test as to whether a mistake or omission is accidental is, in my view: "If the matter had been drawn to the Tribunal's attention, would the correction at once have been made?" (see Williams 1.36.07.65 and the cases there cited; see also *Riga v. Peninsular Home Improvements* [2000] VCAT 56).
- 7 Quite obviously, had my mind been directed to the fact that the expert was not in fact Mr Rosenbes I would have not said that it was. It is therefore appropriate to make an amending order.

SENIOR MEMBER R. WALKER