

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D875/2006

CATCHWORDS

Domestic building - counter – indemnity – service of notice of claims decision – case dismissed.

APPLICANT	Victorian Managed Insurance Authority (ACN 006 258 233) formerly Housing Guarantee Fund Limited
RESPONDENTS	Konstantinos Karamitros, Nicky Karamitros
WHERE HELD	Melbourne
BEFORE	Senior Member D. Cremean
HEARING TYPE	Hearing
DATE OF HEARING	16 March 2007
DATE OF ORDER	16 March 2007
CITATION	Victorian Managed Insurance Authority v Karamitros (Domestic Building) [2007] VCAT 466

ORDER

- 1 Order dismissed.
- 2 Order Applicant to pay costs of the First Respondent on County Court Scale “A”.
- 3 No other order for costs is made.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

For the Applicant	Mr D. McDonald of Counsel
For the Respondents	Mr P. Franzese, Solicitor

REASONS

- 1 The applicant is claiming the sum of \$18,603.00 against the Respondents.
- 2 This claim arises out of a settlement of another claim which was made by the owners of premises at Brentwood Avenue, Pascoe Vale South.
- 3 It is foundational to the proceeding that the Respondents did not appeal the decision of the Applicant called the “claims decision”. See paragraph 13 of Statement of Claim. It is both foundational and, thus, fundamental.
- 4 That decision was allegedly conveyed to “K & N Karamitros” by letter dated 2 March 2004 sent by registered mail which I accept was returned unopened.
- 5 It was not sent to “Konstantinos Karamitros” or to “Nicky Karamitros” individually.
- 6 Considering the terms of s16 of the *House Contracts Guarantee Act 1987* I am not satisfied the foundational element to the cause of action has been established.
- 7 Section 16(1) speaks of “a builder” who is dissatisfied with a decision. Sending the notice to “K & N Karamitros” is not sending it to “a person” who is “a builder”.
- 8 Moreover I have no evidence that the notice was ever “received” by the builder. The provision requires *receipt* of notice: not merely service of same. I accept that the notice, sent by registered mail, was returned unopened. By definition, this seems to me to mean it was never received by anyone except Australia Post.
- 9 Further, I am not satisfied this notice was sent to the usual or last known residential address. It may have been the “last” residential address – making assumptions from later documentation – but it may not have been the “usual” one.
- 10 In my view a crucial foundational element in the proceeding is lacking.
- 11 Application is dismissed, in consequence.

SENIOR MEMBER D. CREMEAN