

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**DOMESTIC BUILDING LIST**

VCAT REFERENCE NO. D388/2006

**CATCHWORDS**

Defects, Monitoring Programme, Testing Programme, Prototype, Remedial Works.

**APPLICANTS**

Zirky's Apartments Pty Ltd (ACN 083 966 769), Omega Marketing Pty Ltd (ACN 008 937 700), WR Parsons Pty Ltd (ACN 063 346 832), David Eric Blackburn, Mary Kaye Blackburn, John Lewis Malin, Clarke James Roycroft, Judith Anne Roycroft, Judith Madeline Kudnig, Rudolf Philip Kudnig, Jan Frederick Overeem, Mark Alexander Armstrong, Thomas Alfred Clipston, Jacky Ann Clipson, Christopher Gerard Wilson, Lithium Holdings Pty Ltd (ACN 087 198 412), Jennifer Ann Woods, Anne Marie Winckel, David James Wardle, Grant Allen Watson, Gregory John Fenton, Shaun Anthony Booth, Julian Ashley Feller, Nine Beaconsfield Road Pty Ltd (ACN 005 812 402), Australian Building Investments Pty Ltd (ACN 010 802 490), Tracy Frances Baxter, Oregon Bay Pty Ltd (ACN 054 197 063), Forster Development Company Pty Ltd (ACN 000 279 667), JS Services No. 1 Pty Ltd (ACN 092 067 984), Albert Leibetseder, Rosemarie Leibetseder, Peter Martin, Lily Tanoski, Nikola Tanoski, Stanko Tanoski, Violeta Tanoski, Giltone Pty Ltd, Wendy Esther Pty Ltd (ACN 005 277 734), Glen Anthony Dale

**FIRST RESPONDENT**

Glenvill Pty Ltd (ACN 007 034 451)

**SECOND RESPONDENT**

ZGC Development Pty Ltd (ACN 083 966 732)

**JOINED PARTY**

CGU Insurance (ACN 004 478 371)

**WHERE HELD**

Melbourne

**BEFORE**

Senior Member R. Young

**HEARING TYPE**

Compulsory Conference

**DATE OF HEARING**

27 April 2007

**DATE OF ORDER**

1 May 2007

**CITATION**

Zirkys Apartments v Glenvill (Domestic Building) [2007] VCAT 669

**ORDER**

- 1 By 12 May 2007, Glenvill Pty Ltd, will provide copies of all 'as built' construction details and plans to the experts who comprise:
  - Mr J. Browning of Accuform Pty Ltd, 23 Bangalow Street, Minyama Qld 4575
  - Mr B. Miller of Level 1, 292 Church Street, Richmond Vic
  - Mr I. Bennie of Façade Consulting Laboratory
- 2 The parties have 14 days from the date of these orders to comment on the proposed schedule of works of monitoring and testing, as well as to the orders I propose to make for their implementation and for the future course of this proceeding.
- 3 Costs reserved.

**SENIOR MEMBER R. YOUNG**

**APPEARANCES:**

For the Applicants	Mr J. Browning, Accuform Pty Ltd, Civil Engineer
For the First Respondent	Mr I. Benning, Façade Consulting Laboratory, Façade Engineer
For the Second Respondent	No appearance
For the Joined Party	No appearance

## REASONS

- 1 I was disappointed that only two experts, Mr J. Browning of Accuform Pty Ltd engaged by the Applicants and Mr I. Bennie of Façade Consulting Laboratory engaged by Glenvill Pty Ltd, attended the experts meeting. I contacted Mr B. Miller, Architect, who informed me he was not instructed to attend. I consider his input would have been valuable. I am not sure if any other experts have been engaged by the parties. The order convening the meeting of experts, Order 3 of the orders of 23 January 2007, required the experts to attend and I would ask that at any future meeting of experts the parties instruct all their experts to attend unless otherwise ordered.
- 2 That being said, I consider substantial progress was made due to Mr Browning and Mr Bennie's joint discussions. The likely causes of the problems were discussed and both experts were of the opinion that a specific data gathering programme was needed to ascertain what climatic and building conditions were contributing to the problems. The data would be used to understand the specific causes of the problems and to design remedial measures that combine the greatest likelihood of effectiveness with efficiency.
- 3 At this stage Mr Bennie, a façade expert, considers that the most likely remedial work to be effective in diminishing condensation problems is to place an insulating cover of some form over the window frame to provide an insulating air gap that would provide a steeper heat gradient across the window frame from inside to outside. Preliminary thermal analysis indicates that the installation of appropriate external covers over the external window frames would result in an increase in the temperature difference between the outside window frame temperature and the inside window frame temperature of approximately 7°C. The insulating cover could also be designed to seal between the window frame and the building, thereby preventing or at least cutting down rainwater penetration via the window opening into the cavity of the external solid masonry wall of the apartments; this water penetration is a major concern of Mr Browning.
- 4 In order to implement the programme the experts advise that installation of the data gathering instrumentation for the data gathering programme and the prototype insulating cover to a window must be carried out before the start of the snow season, i.e. approximately the end of May, 2007. To this end the experts have prepared a "Proposed Schedule for Determination of the Method for the carrying out of a remedial works program to Zirky's Apartments". I have attached a copy of this proposed schedule as Schedule 'A' to these orders and reasons. Provided there are no valid objections to the proposed program within 14 days of the date of these orders I intend to order that it generally be implemented and carried out as set out in the proposed schedule prior to and over the next snow season. If any party has objections to the proposed orders I intend to make or to the proposed schedule I will call a directions hearing prior to making any further orders.

- 5 The parties must understand that undertaking such a programme of monitoring works is not a required step in the preparation of these proceedings for hearing. The proposed schedule is to develop an engineering methodology to understand and obtain sufficient design data in what is an extreme climate for normal Australian conditions; so as to be able to confidently design a programme of remedial works in a manner that is effective for the apartment owners both as to the alleviation of the problems and confidence in the long term performance of the remedial works; and secondly, that the benefit to the owners is achieved at the most economic cost.
- 6 At this stage I intend to order that the costs of the attached schedule of works be borne by the Applicants and Glenvill and such costs will thereafter become costs in the cause.
- 7 To ensure that the information gathered and the testing undertaken is of ultimate benefit to the parties it cannot be confidential and privileged under the protection of a compulsory conference. I, therefore, intend to order that in respect of the information gathered under the proposed schedule that there is no confidentiality in such information other than that which attaches to normal open information in litigation.
- 8 As I understand the situation in these proceedings, there are many climate variables for which there is no data, further there is a lack of precise information as to the building components used in the construction of the apartments. Given the range of expert opinions if these proceedings are pushed to a hearing on the current information the adjudicator's decision in relation to condensation and water penetration around windows could vary widely, from dismissing some or all of the proceedings to requiring all window frames to be removed and replaced. Given that all experts acknowledge that the condensation and water penetration around windows is to some extent unsatisfactory, I consider that there is a greater probability of the latter finding. Therefore, I consider that it is in the parties' interests to have the monitoring and testing programme as outlined in the proposed schedule proceed and the information be open for the use of any party.
- 9 If the programme is carried out I would like the parties to provide me with the data gained and the test results on 18 October 2007. A compulsory conference in these proceedings is already set down for that day but I will make orders that it be adjourned and a directions hearing be substituted at which the experts should attend to brief myself and the parties on the information gained so that the hearing can develop directions for the future course of the proceeding.

**SENIOR MEMBER R. YOUNG**