VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST VCAT REFERENCE NO. BP929/2018

CATCHWORDS

Whether a term of a retail lease which is void because of sections 52(2) and 94(1) of the *Retail Leases Act 2003* can be severed; *Rieson v SST Consulting Services Pty Ltd* [2005] FCAFC 6; *Brew v Whitlock (No 2)* [1967] VR 804; and *Humphries v The Proprietors "Surfers Palms North" Group Titles Plan 1955* (1993-1994) 179 CLR 507

APPLICANT	Jia Wei Cheng
FIRST RESPONDENT	Li Jing Wang
SECOND RESPONDENT	Jackie Yun Cai
WHERE HELD	Melbourne
BEFORE	Deputy President I. Lulham
TYPE OF ORDER	Final order, save as to costs, made in Chambers
DATE OF LAST HEARING	30 April 2019
DATE OF ORDER	14 August 2019
DATE OF REASONS	14 August 2019
CITATION	Cheng v Wang (Building and Property) [2019] VCAT 1016

ORDER

The Tribunal notes

This Order had been prepared some time ago, on the understanding that the Applicant had not filed a submission under paragraph 6 of the Order made 30 April 2019. Just before the Order was to be despatched to the parties, the Registry came across some documents which were not accompanied by a covering letter or otherwise identified. On 17 July 2019 it was realised that those documents had been filed by the Applicant on 26 April 2019, before the hearing on 30 April 2019, but that they addressed some issues which could have been raised, under paragraph 6 of the Order made 30 April 2019. Consideration of those documents delayed the preparation of this Order.

The Tribunal orders

1. The date by which the Respondents were required to file submissions, under paragraph 5 of the Order made 30 April 2019 is extended to 28 May 2019.

2. As to these matters referred to in these sub-paragraphs of paragraph 70 of the Reasons for the Order made 12 April 2019:

   sub-paragraph 70 3, the Respondents must pay the Applicant $200.00;

   sub-paragraph 70 4(1), the Respondents must engage an appropriate tradesperson to service the dishwasher in the leased premises, at their expense;

   sub-paragraph 70 4(3), the Respondents must bear the expense of having the electrical meter board in the leased premises checked by an appropriate tradesperson and repaired or replaced if that tradesperson states that to be necessary;

   sub-paragraph 70 4(4), the Respondents must repair the oven in the leased premises, by engaging a qualified contractor to replace the heating elements. If the oven cannot be repaired by replacing the heating elements, the Respondents must replace it with a commercial oven of similar dimensions to existing, and carry out any work on the flue which is necessary, and take all steps to ensure that all relevant fire safety regulations are complied with;

   sub-paragraph 70 4(6), the Respondents must repaint the window frames and the exterior door of the leased premises;

   sub-paragraph 70 4(9), the Respondents must clean, service and maintain the electrical heater in the leased premises; and

   sub-paragraph 70 4(10), the Applicant's claim against the Respondents in relation to cracks in the interior wall and a hole in the ceiling are dismissed.

3. As to these matters referred to in sub-paragraphs C&1, 2, 4(2), 4(5), 4(7), 4(8), 4(11) and 4(12) of paragraph 70 of the Reasons for the Order made 12 April 2019, the orders are set out in the column headed **"Decision"** in the attached Table.

4. As to the disclosure statement point: the Respondents' application for an amendment to the Order and Reasons made 12 April 2019 on the question of whether they had given the Applicant a disclosure statement in relation to the most recent lease is refused.

5. As to the severance point: the Respondents' applications for a declaration that item 22(ii) of the lease could be severed and for an Order that it was severed are refused.

6. Arising from the Applicant's documents filed under paragraph 6 of the Order made 30 April 2019, which contain a written submission that the Respondents ought pay the Applicant's costs of this proceeding pursuant to section 79 of the *Retail Leases Act 2003*, the Respondents shall by 17 September 2019 file with the Tribunal and serve on the Applicant a written submission in reply and the Principal Registrar is directed to refer the file to me on 20 September 2019 at which time I will determine the Applicant's application for costs on the basis of those submissions.

I Lulham
Deputy President

APPEARANCES:

For Applicant	In person
For Respondents	Mr. S. Wang, legal practitioner

REASONS

Background

1. On 12 April 2019 the Tribunal issued an Order and Reasons: [2019] VCAT 496. Paragraph 70 of the Reasons set out the scope of the decisions made in the case. They included decisions that the Respondents (Landlords) bore certain obligations, some of which would be met by paying money to the Applicant (Tenant) and some by repairing or replacing particular chattels at their expense.

2. Paragraph 1 of the Order made 12 April 2019 scheduled a directions hearing for the purpose of settling the final Order to be made in the proceeding. That directions hearing was held on 30 April 2019. As stated in the Order made on 30 April 2019, that final Order would deal with the above subjects, and with two new issues raised by the Landlords on 12 April 2019: an application under section 119 of the *Victorian Civil and Administrative Tribunal Act 1998*, on the question of whether they had given the Applicant a disclosure statement in relation to the most recent lease ["the disclosure statement point"]; and their submission that item 22(ii) of the lease is severable ["the severance point"].

3. This final Order must therefore deals with:

   (a) the decisions in paragraph 70, sub-paragraphs 3, 4(1), 4(3), 4(4), 4(6), 4(9) and 4(10) of the Reasons for the Order made 12 April 2019;

   (b) the decisions on the replacement of items and the claims for money, referred to in paragraph 70 sub-paragraphs C&1, 2, 4(2), 4(5), 4(7), 4(8), 4(11) and 4(12);

   (c) the Landlords' application under section 119 of the *Victorian Civil and Administrative Tribunal Act 1998*, on the question of whether they had given the Tenant a disclosure statement in relation to the most recent lease ["the disclosure statement point"];

   (d) the Landlords' submission that item 22(ii) of the lease is severable ["the severance point"]; and

(e) the Tenant's claim for costs, contained in his documents filed 26 April 2019 and treated as if they had been filed under paragraph 6 of the Order made 30 April 2019. Even though the Tenant refers to section 109 of the *Victorian Civil and Administrative Tribunal Act 1998* it is clear that, as a self- represented litigant, his intention was to rely on section 79 of the *Retail Leases Act 2003*, sub-section (2) of which empowers the Tribunal to "make an order that a party pay all or a specified part of the costs of another party in the proceeding but *only* if the Tribunal is satisfied that it is fair to do so because — (a) the party conducted the proceeding in a *vexatious way that unnecessarily disadvantaged the other party* to the proceeding" *(emphasis added).* Even though the Applicant has not incurred the fees of a legal practitioner, as he is self-represented, subsection (3) defines costs to include "fees, charges and disbursements".

4. In paragraph 70 of the Reasons for the Order made 12 April 2019 I set out those items which the Tenant claimed were to be repaired or replaced at the cost of the Landlords. The Tenant did not succeed on all items.

5. Pursuant to the Order of 30 April 2019:

   (a) under paragraph 1, on 23 May 2019 the Tenant filed his List of items to be repaired or replaced.

   (b) under paragraph 3, on 18 June 2019 the Landlords filed their List of items in reply.

   (c) under paragraph 5, on 28 May 2019 the Landlords filed submissions and some copy authorities on the "severance point". This document was four days late but the Tribunal will extend time.

6. Whilst it was initially believed that the Tenant had not filed submissions in reply under paragraph 6 of that Order, documents filed on 26 April 2019 were eventually located by Registry and deemed to have been filed under paragraph 6. As stated above, those documents validly contain a claim for costs. They also refer to other issues, such as the Tenant's regret at not having obtained a builder's report, and a reference to an injunction. To remove any doubt, though, I note that the only aspects of those documents which can be considered in this proceeding are the Tenant's handwritten comments on the letter from Tisher Liner FC Law dated 28 May 2018 and the Tenant's application for costs.

As to the dispute over repair or replacement of items:

7. It is convenient to set out the issues, reasons and conclusions in a Table which deals with the items in respect of which the Landlords are liable. I have considered the documents filed and served by the parties, which in the case of the Tenant included copies of brochures, quotes and the like. The Table appears as an attachment to these Reasons.

8. I note in passing that in relation to item 4(2)(a) in the Table (the replacement of the 500 litre chest freezer) the Landlords' document said they conceded that item at a cost of $550.00 "provided an Order was made acknowledging that (the Landlords) own the freezer". It is not part of this proceeding for the Tribunal to make such a declaration, because it was not raised in the 'pleadings' or in the hearing, and if a declaration was made in relation to one chattel it would invite requests for unnecessary declarations about other chattels. It is obvious that the Landlords are to bear the cost of replacing an old freezer which they owned with a new freezer which they are paying for. Of course the Landlords will own the new freezer. Parties cannot seek declarations in an endless quest to put things on the record. The Tribunal declines to formally make a declaration. It seems to me that the Landlords' purported request for a declaration is precisely the kind of conduct which the Tenant submits is vexatious for the purposes of his costs application.

As to the disclosure statement point:

9. The Landlords sought an amendment to the Order and Reasons made 12 April 2019 on the question of whether they had given the Applicant a disclosure statement in relation to the most recent lease. They considered that it would improve their position on imposing liabilities on the Tenant by characterising them as recoverable outgoings. In that sense, the Landlords were almost purporting to appeal to VCAT from VCAT's Order, which is impermissible.

10. In any event that disclosure statement dated 9 February 2018 is referred to in paragraph 21 of the Reasons. In that paragraph I noted that the disclosure statement said that outgoings "for Repairs and Maintenance will be 'depending on need' ". However, as I noted in paragraph 38 of the Reasons, the lease said, "Outgoings which the Tenant must pay or reimburse Council and water authority rates and levies All municipal, water and sewerage rates". At paragraph 50 of the Reasons I noted that clauses 2.1.2 and 20.7 did not impose any additional obligation on the Tenant in relation to outgoings, or in other words expand the costs and expenses which were to be considered as outgoings payable by the Tenant.

11. It follows that the application for an amendment to the Order and Reasons made 12 April 2019 on the disclosure statement point is misconceived and will not be granted.

As to the severance point:

12. In the Reasons for the Order made 12 April 2019, I concluded that item 22(ii) of the lease was void.

13. The Landlords submitted that if item 22(ii) of the lease was not enforceable, it begged the question of whether it can be severed. In introducing this issue at the directions hearing on 30 April 2019 the Landlords said that if item 22(ii) was not enforceable but was not severable, then the Landlords would have supplied equipment to the Tenant on the basis of the Tenant's contractual promise to repair and replace it, and that correspondingly the Landlords would not have supplied the equipment if the Tenant was not obliged to repair and replace it.

14. Accordingly, the Landlords sought a declaration as to whether item 22(ii) was severable, and if so whether it has been severed.

15. I have considered the Landlords' written submissions and the authorities relied on: *Rieson v SST Consulting Services Pty Ltd* [2005] FCAFC 6; *Brew v Whitlock (No 2)* [1967] VR 804; and *Humphries v The Proprietors "Surfers Palms North" Group Titles Plan 1955* (1993-1994) 179 CLR 507. In their written submission the Landlords say that item 22(ii) cannot be severed because to do so would fundamentally alter the character or nature of the lease.

16. The Tenant, who is self-represented and has been economical in his submissions overall, did not file submissions on this issue.

17. With respect it seems to me that the Landlords misunderstand and conflate the questions of whether a statute renders a provision of a contract void with the common law on severance.

18. As I said in the Reasons for the Order made 12 April 2019, item 22(ii) is void because of sections 52(2) and 94(1) of the *Retail Leases Act 2003.* I quoted those sections in paragraph 30 of the Reasons. They use the form of words, "(A) provision in a retail premises lease is void to the extent that it …"

19. There is also a procedural issue, in that by seeking severance of clauses from the lease only after the Order made 12 April 2019, the Landlords are purporting to bring a counterclaim after the proceeding has substantially been completed.

20. In paragraph 7 of the Landlords' submission they wrote:

> "The decision in *Rieson v SST Consulting Services Pty Ltd* stands for the principle that, where there are two distinct obligations that are legally separate from each other, but the parties intend that the two obligations be reciprocal and conditional upon each other, the two obligations are not severable. Severance in such circumstances would otherwise change the very character or nature of the contract, even if it does not change the character or nature of the remaining lawful obligations".

21. The difficulty facing the Landlords in attempting to make this submission is that they elected not to give evidence at the hearing: see paragraph 14 of the Reasons for the Order made 12 April 2019. Thus the Landlords have no evidentiary basis for making submissions about the parties' intentions.

22. In paragraphs 8 – 10 of the Landlords' submission, they submitted that in *Humphries v The Proprietors "Surfers Palms North" Group Titles Plan*, a body corporate and property manager had a contract under which it would supply 19 specified types of service in return for a lump sum fee of $60,000.00. When one of the provisions of the contract was held to be void, the question was whether that void provision could be severed: if it was severed, the manager could provide 18 types of service but still receive the lump sum fee. The Landlords submit that the High Court found that the clause was not severable, because deleting that one service changed the nature or kind of the contract and not merely its extent, and that as a result the entire contract was void. In the current case, though, the Landlords are not submitting that the entire lease is void. It seems to me that they are seeking to misapply the High Court's decision and are attempting to cherry pick clauses from the lease, leaving in place those clauses which are in their favour.

23. At paragraph 17 the Landlords submit that it is not possible to conclude that the Landlords would have accepted the rent set by the lease without the Tenant being obliged to repair items. However, this submission is really to the effect that VCAT should relieve the Landlords from a bad bargain, and again in view of the Landlords' decision not to give evidence there is no basis on which I could conclude what rent the Landlords would have insisted upon. I note in passing that the Tenant does not consider that the Landlords had entered a bargain which was unfavourable to them: in the hearing he asserted that he had been paying too much rent for years because the Landlords would not properly review the rent, and that he had issued previous VCAT proceedings to enforce the rent review provisions.

24. Similar submissions about the Landlords' alleged intentions are made in paragraphs 18, 19 and 23 of the submissions. Had the Landlords given evidence about their intentions they may have been faced with a submission from the Tenant that the principles requiring a contract to be construed objectively rendered that evidence irrelevant. More to the point though, as they elected not to give evidence there is no factual basis for the submission about their intentions.

25. I turn now to the authorities relied on by the Landlords.

26. In *Rieson v SST Consulting Services Pty Ltd*, section 47 of the *Trade Practices Act 1974* prohibited a corporation from engaging in the practice of exclusive dealing[1]. Section 87 provided that where a Court found that a person had suffered loss or damage by such conduct, the Court could make such Orders as it thought appropriate against the relevant party, to prevent or reduce the loss or damage.

27. Unlike sections 52(2) and 94(1) of the *Retail Leases Act 2003*, the *Trade Practices Act* did not say that a provision of a contract which amounted to exclusive dealing is void. It prohibited the exclusive dealing, thus making it illegal. Also unlike the *Retail Leases Act 2003* which is silent on this subject, section 4L of the *Trade Practices Act* recognised severance, saying that "subject to any order made under section 87 … nothing in this Act affects the validity or enforceability of the contract otherwise than in relation to that provision in so far as that provision is severable".

28. SST had made a loan made to a company, which Messrs Reisen and Bell had guaranteed, in return for the company giving work to SST's nominee. SST sued Messrs Reisen and Bell for repayment of the loans.

29. As Wilcox and Finn JJ put it in *Rieson*, at paragraph 11 of their joint judgment, the Court below "considered that section 4L provided that, if a provision of a contract contravened the Act but was severable, it did not affect the validity or enforceability of the balance of the provisions. If it was not severable, the contract was illegal and void".

30. So the regime under the *Trade Practices Act* discussed in *Rieson* is markedly different from that under *Retail Leases Act 2003* which expressly made item 22(ii) of the lease void rather than illegal.

[1] See now section 47 of the *Competition and Consumer Act 2010*. Exclusive dealing describes a range of conduct which abuses a corporation's market dominance. Examples include supplying goods or services on condition that the purchaser does not acquire goods or services from a competitor.

31. In the appeal, SST submitted that section 87, which gave the Court broad powers to tailor orders, reflected an appropriate legislative balance between penalising a contravention of the *Trade Practices Act* and avoiding the serious consequences of invalidating the contract.

32. Commencing at paragraph 50 Wilcox and Finn JJ examined the principles of severance.

33. At paragraph 56 they noted that the two distinct arrangements between the parties – the provision of loan advances and repayment with interest, and the provision of work to SST's nominee – were not separately illegal. Illegality resulted from making the provision of the loan conditional on the provision of work, thus contravening the Trade Practices Act.

34. There is no analogy to be drawn between the facts in *Rieson* and the lease between the Tenant and the Landlords in this VCAT proceeding. In this case, it is simply a matter of the *Retail Leases Act 2003* making item 22(ii) of the lease void, not illegal.

35. At paragraph 57 Wilcox and Finn JJ noted that in the appeal, SST conceded that the two arrangements were bound together and that it was impossible to treat the timing of the two arrangements as being divisible or as an insignificant component of the overall arrangements.

36. At paragraph 69 their Honours said "(T)he contract was illegal. It was prohibited by statute. Neither the contract nor the guarantee was enforceable because, in order to prove its rights in either case, SST Consulting would have to rely upon the illegal contract". Again, this is quite different to this VCAT proceeding, because the *Retail Leases Act* has not made the lease illegal, it has had the narrower effect of making item 22(ii) of the lease void.

37. Sackville J concurred with Wilcox and Finn JJ, in a separate judgment. At paragraph 81 he said that if an Act of Parliament prohibits the making of a contract, the contract does not give rise to an enforceable right or obligation. If Parliament prohibits the performance of the contract, performance cannot be compelled. At paragraphs 82 – 83 His Honour said that if the *Trade Practices Act* prohibited the making of an agreement by which the party engaged in exclusive dealing, ordinarily the contract would not give rise to enforceable rights, and performance of the agreement cannot be compelled, unless the doctrine of severance could be invoked to save part of the contract. Since the circumstances in which illegal contracts are entered into vary so widely, no single test of severance has been accepted.

38. Again though, the *Retail Leases Act* has not made the lease illegal.

39. His Honour discussed *Humphries v The Proprietors "Surfers Palms North" Group Titles Plan 1955* and said that an Owners Corporation – then called the 'body corporate' – had entered into a management agreement, part of which provided that the manager would conduct a letting agency for townhouses on the property. However under the relevant statute the Owners Corporation did not have power to enter into an agreement for letting services. Sackville J referred to passages in the High Court's judgment in which it had discussed whether obligations were divisible, and where the High Court had said it was not possible to treat the Owners Corporation's promise to pay remuneration as divisible between the purposes for which the Owners Corporation was empowered to disburse funds and purposes for which the disbursement of funds was forbidden – i.e. the letting services.

40. At paragraph 92 Sackville J said, "*Humphries* seems to support the proposition that where a single promise to pay is *not merely void but illegal* by virtue of statute, the promise cannot be treated as divisible between legitimate and forbidden purposes unless the forbidden purposes are of 'minimal significance' " *(emphasis added)*

41. Additionally, and all but predicting the underlying issue in this VCAT case that the Landlords say they have entered a bad bargain, at paragraph 96 Sackville J said that the illegality of the contract meant that SST could not "recover the large sum due to it under the terms freely accepted by (Messrs Reisen and Bell but that) this comes about, however, because SST chose to lend money on a condition that contravened … the *Trade Practices Act*. It must abide the consequences, even though they may appear to be harsh".

42. *Brew v Whitlock (No 2)* also includes some judicial commentary on the principles of severance, but is even less relevant to this VCAT case as it concerned the question of whether an uncertain condition in the contract ought be severed. The case has no factual analogy with this VCAT proceeding. It is unnecessary to discuss the decision in any detail.

43. Similarly, I consider the references in *Rieson v SST Consulting Services Pty Ltd* by Sackville J to *Humphries v The Proprietors "Surfers Palms North" Group Titles Plan 1955* to be sufficient for the purposes of this VCAT proceeding. It is unnecessary to discuss the decision in *Humphries* in any detail.

44. For all the reasons set out above I consider that the Landlords' submission on the severance point to be irrelevant. The Landlords are seeking to raise a counterclaim after the case has effectively been concluded, and their submission focuses on severance in the context of illegal contracts whereas the *Retail Leases Act* has not made the lease illegal, but had the narrower effect of making item 22(ii) of the lease void. The Landlord's application on the severance point is refused.

I. Lulham
Deputy President

14 August 2019

BP929 2018 table

Item number in paragraph 70 of the Reasons for the Order made 12 April 2019, in respect of which the Landlords are liable	**Decision**	**Reason / explanation (where necessary)**
C & 1 The boiling water unit	(a) The Respondents shall pay $200.00 in respect of the urgent temporary repair, and $265.00 in respect of the removal of the old boiling water unit. (b) Additionally the Respondents shall replace the existing 20 L capacity boiling water unit with a new Whelan 20 L capacity boiling water unit model SL20, or if a Whelan is not available, an equivalent Rheem Commercial Lazer unit. The Respondents shall pay for the unit and for the installation of the unit.	(a) See paragraph 16 of the reasons for the Order made 12 April 2019. The Applicant's evidence on this point was not contested. The $200.00 was conceded by the Respondents, and the Tribunal finds that the $265.00 is an aspect of the failure and necessary replacement of the old boiling water unit. (b) On the evidence presented a Whelan SL20 is the most appropriate replacement for the old unit because of its features. The Rheem Commercial Lazer 20 L capacity boiling water unit does not have the same features and is only an acceptable replacement if a Whelan is not

		available.
2. Cost of an urgent repair of hot water service	The Respondents are not liable	The Applicant's document encloses the tax invoice for this urgent repair. The invoices dated 22 October 2008. The claim is statute barred.
4 (2): (a) 500 litre chest freezer (b) Coke / drinks fridge (c) 400 litre upright fridge (Kelvinator) (d) Twin door 1000 litre display fridge	(a) The Respondents are to pay $550.00 + $88.00 = $638.00 (b) the Respondents are to supply a Polar brand, 98 litre fridge or, if that is not available, a 98 L fridge made by another manufacturer which is sold for no less than $699.00. (c) the Respondents are to supply a Silver Chef brand, 400 litre fridge or, if that is not available, a 400 L fridge made by another manufacturer which is sold for no less than $949.00 (d) the Respondents are to supply a Polar brand, upright double door display fridge 944 L or, if that is not available, a 944 L fridge made	(a) Conceded by Respondents (b) The Applicant sought supply of a Polar brand, 98 litre fridge, and produced a quote for $699.00. This was conceded by the Respondents, subject only to them seeking to be able to supply a different brand if the Polar was unavailable. (c) Same reasoning as (b) (d) Same reasoning as (b)

	by another manufacturer which is sold for no less than $1,949.90	
4(4) heating elements in the oven	The Respondents are to repair the oven, by engaging a qualified contractor to replace the heating elements. If the oven cannot be repaired by replacing the heating elements, the Respondents must replace it with a commercial oven of similar dimensions to existing, and carry out any work on the flue which is necessary, and take all steps to ensure that all relevant fire safety regulations are complied with	The Applicant submits the oven is irreparable and requires replacement. The Applicant has not submitted a quote. The Respondents had made no submission on this item.
4(5) Amplifier for the music system	The Respondents shall supply a Yamaha AV Receiver model RS202S. If that model receiver is not available, the Respondents shall supply an equivalent Receiver made by another manufacturer which sells for no less than $479.00	Undoubtedly with the evolution of sound equipment the replacement amplifier will have better features than the old amplifier. The Respondents' objection on the basis that a replacement amplifier is thus better than the old amplifier is rejected. In real terms the new replacement is probably cheaper than the original.
4(7) Wood heater	The Respondents are to repair the wood heater, by engaging a qualified contractor. If the wood heater cannot be repaired, they must replace it with	The existing heater is a Coonara brand wood heater of dimensions W1040 x D125 x H800. Coonara is a famous brand. Replacing it with

	a Coonara brand wood heater of dimensions W1040 x D125 x H800, and carry out any work on the flue which is necessary, and take all steps to ensure that all relevant fire safety regulations are complied with	a cheaper or unknown brand would be inconsistent with the Respondents' legal obligations
4(8) Steel shelves in the cool room	The Respondents shall supply an Atlas 4 shelf wire shelving kit, or alternatively shelving of similar dimensions supplied by another manufacturer provided the similar product is at least as good as the Atlas 4, to replace all of the shelves in the coolroom.	The Respondents are liable to bear this expense
4(11) Plastic covers of the fluorescent tubes	The parties shall replace the fluorescent lights in the premises with Philips 20 fluorescent that in light fittings of appropriate dimensions. Having regard to the Order made on 12 April 2019, the costs of the fluorescent light fittings will be shared in the proportions of one quarter by the Applicant and three quarters by the Respondents.	The Respondents are liable at law to replace the plastic covers but not the entire light fittings. However the evidence shows that the light fittings cannot practically be divided between "covers" and the fluorescent batten light fittings themselves. In modern manufacturing there are now many items which, whilst in the past could be dismantled by the consumer so that individual components could be replaced, but which now come as whole units.
4(12) Chairs	The Respondents shall provide 65 x Astor brand commercial chairs which sell for $149.00 each.	The Applicant sought Astor brand commercial chairs which sell for $149.00 each. The

		Applicant also shows the cost of cheaper competitive chairs, which are as low as $119.00 each. The Respondents seek to supply suitable chairs that they choose, but they have not submitted quotes or costings. The Applicant's evidence is the best evidence on this issue. The seating capacity of the restaurant is 60 and is appropriate that the Applicants have five spare chairs.