

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**BUILDING AND PROPERTY LIST**

**VCAT Reference: BP794/2017**

**CATCHWORDS**

*Section 75 Victorian Civil and Administrative Tribunal Act 1998*

**FIRST APPLICANT:** Donco Iloski  
**SECOND APPLICANT:** Tatjana Iloski  
**RESPONDENT:** Gadens Lawyers  
**WHERE HELD:** 55 King Street, Melbourne  
**BEFORE:** Judge Harbison, Acting President  
**HEARING TYPE:** S75 and S77 application  
**DATE OF HEARING:** 29 August 2017  
**DATE OF ORDER:** 31 August 2017  
**CITATION:** Iloski v Gadens Lawyers (Building and Property)  
[2017] VCAT 1396

**ORDER**

- 1 That this proceeding be summarily dismissed under section 75 of the *Victorian Civil and Administrative Tribunal Act 1998*.
- 2 The respondent's application that the applicants pay the respondent's costs of this proceeding is dismissed.

**Judge Harbison**  
**Acting President**

**APPEARANCES**

For the Applicants Donco Iloski & Tatjana Iloski, in person  
together with Robert Iloski as next friend  
For the Respondent Mr Simon Pitt of counsel

## REASONS

- 1 The respondents have made application that this proceeding be summarily dismissed under section 75 of the VCAT Act or transferred to the County Court of Victoria under section 77 of the same Act.
- 2 The applicants filed an application on the 2 June 2017 against the respondent who is a firm of solicitors. This application was drafted on behalf of the applicants by a relative, Robert Iloski, who is not a lawyer, but who has been assisting the applicants with litigation both before the Tribunal and in the County Court.
- 3 The application filed at the Tribunal sought relief under the co-ownership provisions of the *Property Law Act 1958*. Those provisions are designed to provide a means for co-owners of land to obtain a declaration as to the respective interests of co-owners in land, and to enable an order to be made by VCAT to ensure a just and fair sale or division of the land occurs.
- 4 It is however clear from the application which was filed, and from what was said in the hearing before me by Robert Iloski, that the real issue which the applicants want decided is clarification of the circumstances under which a mortgage was executed over a property at 12 Coonawarra Drive, Thomastown, purportedly signed by Donco Iloski, and whether Gadens Lawyers, who is the respondent to these proceedings, was in some way party to a fraudulent transfer of the interest of Donco Iloski in that property.
- 5 Briefly, the applicants say that both applicants were out of the country at the time when the documents were purportedly signed, and did not sign them.
- 6 It is apparent from looking at the application itself, and by looking at a proposed draft of a counter claim which was originally to have been filed in the County Court in relation to the same subject matter, that the proceeding in this Tribunal is misconceived.
- 7 It seeks relief against Gadens Lawyers as “controllers” of the land.
- 8 However, this term is simply a titles office description assigned to the respondent as a consequence of certain documents being lodged at the Titles Office by those solicitors. Gadens Lawyers have in fact no interest in the land and so there could be no orders made against them as co-owners.
- 9 Further, not all of the co-owners of land are represented in these proceedings. Mr Iloski’s wife Liljana is registered as a proprietor but is not joined in this application.
- 10 Lastly, even if the proceeding was otherwise to fall within the co-ownership provisions, any outcome under that pathway would be of no value, as the real issue centres on the enforceability of the mortgage which presently

exists on the land, and this Tribunal has no jurisdiction under the co-ownership provisions to set aside the mortgage.

- 11 Overall therefore the orders which are sought by the applicants are not capable of resolving the issue which concerns them – that is, whether there was any fraudulent activity by the respondent or any other person surrounding the transfer of Mr Donco Iloski’s interest in the property.
- 12 The Commonwealth Bank has issued proceedings in the County Court of Victoria against Liljana Iloski and Tatjana Iloski for a declaration in relation to refinancing of a loan on the property and an order for possession of the property in order that the Bank be permitted to sell the property in discharge of debts said to be owed to it by Liljana Iloski and Tatjana Iloski.
- 13 It is not appropriate for me to make any comment as to the merits of those proceedings or as to the merits of the proposed counter claims prepared for use in that proceeding.
- 14 Whatever be the merits of those proceedings, it is clear that this proceeding brought in the Tribunal seeking relief under the *Property Law Act 1958* is misconceived.
- 15 I therefore will make an order that the proceeding be summarily dismissed. It is not therefore necessary for me to consider the alternative application under section 77 of the VCAT Act.
- 16 Once I announced this decision, the respondent sought an order for its costs of this proceeding from the 20 July 2017. On that date the respondent served a section 112 offer letter on both of the applicants.
- 17 Although service of this letter means that there is a presumption that the respondent is entitled to its costs, I have decided not to make an order for costs in this case, taking into account that neither of the applicants speak English, that they are assisted by a relative who has only basic legal training and that the applicants and their adviser appear to have completely misunderstood the relevant legislation.
- 18 I also take into account that the respondent represented itself and have therefore not had to pay external solicitor/client legal costs.
- 19 However, I have told the applicants that they should not expect that this position as to costs would be adopted if they issue further proceedings against the respondent which have no basis in fact or law.

**Judge Harbison**  
**Acting President**