

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO: D950/2013
SEE ALSO D690/2013

CATCHWORDS

Building and Property List – Domestic Building Contracts Act 1995; counterclaim

APPLICANTS	Stakes and Timber Pty Ltd (ACN: 120 151 984)t/as Australian Hardwood Flooring & Decking co.
RESPONDENT	Mr Adrian Campagna
WHERE HELD	Melbourne
BEFORE	D.Calabrò
HEARING TYPE	Hearing
DATE OF HEARING	25 November 2013, 1 September 2014, 2 September 2014
DATE OF ORDER	4 October 2014
CITATION	Stakes and Timber Pty Ltd trading as Australian Hardwood Flooring & Decking Co v Campagna (Building and Property) [2014] VCAT 1290

ORDER

1. The Tribunal orders the respondent Adrian Campagna pay the applicant Stakes and Timber Pty Ltd the sum of \$5,953.00. No order for costs.
2. This amount is set off against the amount ordered against Stakes and Timber Pty Ltd in file number D690/2013 so that the respondent Adrian Campagna is not required to pay any money to the applicant Stakes and Time Pty Ltd.

D.Calabrò
Member

APPEARANCES:

For Applicant Mr Beck-Godoy, Counsel
For Respondents Mr T. Carroll, General Manager

File D690/2013

The Tribunal refers to its decision in file D690/2013.

1. The claim and counter claim relate to the same facts and circumstances. The Tribunal's decision has considered the evidence and issues relating to this matter and made findings regarding to this matter in its decision in file D690/2013.
2. I reproduced the decision relating to the counterclaim by Stakes and Timber Pty Ltd v Adrian Campagna and the order for set off below:

“Counterclaim by Stakes and Timber Pty Ltd v Adrian Campagna D950/2013

3. There is no dispute by the respondent (Mr Campagna) that he did not pay the full amount owing under the contract. He withheld the final payment of \$5953.00 (inclusive of GST).
4. The applicant completed the work (the issue of how it was completed and any rectification or compensation payable is discussed above). \$5953.00 remained outstanding.
5. The respondent's counsel submitted that the Tribunal should set off any amount owed by the respondent in this case (D950/2013) against any monetary order the Tribunal makes in the case D690/2013.
6. The Tribunal orders the respondent Adrian Campagna in file number D950/2013 pay the applicant Stakes and Timber Pty Ltd the sum of \$5953.00.
7. The amount of the claim is less than \$10,000. I note section 109 of the Victorian Civil and Administrative Tribunal Act 1997 and make no order for costs.
8. This amount is set off against the amount ordered against Stakes and Timber Pty Ltd in file number D690/2013, so that the amount payable by Stakes and Timber Pty Ltd must pay the applicants Adrian Campagna and Mrs Lara Campagna the sum of \$41,546.10.
9. The Tribunal orders in matter D690/2013, the respondent Stakes and Timber Pty Ltd pay the applicants Adrian Campagna and Mrs Lara Campagna costs on a party/party basis, and if there is no resolution between the parties it is to be taxed by the Victorian Costs Court according to the appropriate County Court Scale.”

Domenico Calabrò
Member