

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

DOMESTIC BUILDING LIST

VCAT REFERENCE NO. D45/2006

CATCHWORDS

Domestic building – illegality of contract – claim for expenses by builder – orders to be made.

APPLICANT	Dimce Trajkovski
RESPONDENT	Chillico & Sons Pty Ltd (ACN 006 334 256)
WHERE HELD	Melbourne
BEFORE	Senior Member D. Cremean
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	29 March 2006
DATE OF ORDER	31 March 2006

[2006] VCAT 464

ORDER

1. Order Respondent to pay Applicant the sum of \$10,600.00.
2. Order Applicant to pay Respondent (after payment of the amount in (1)) the sum of \$2,020.00.

SENIOR MEMBER D. CREMEAN

APPEARANCES:

For the Applicant	In person
For the Respondent	Mr V. Chillico

REASONS

1. In this matter the Applicant is claiming the return of his deposit of \$10,600.00.
2. This was paid pursuant to a contract entered into between he and the Respondent on 19 July 2005.
3. He has taken the point that that contract is invalid or void for failure to comply with statutory provisions in the Domestic Building Contracts Act 1995.
4. I agree with him that that is so. I refer to s21 (prime cost items provision) and also to s31. The latter (s31(1)(d)) requires that a major domestic building contract must include plans and specifications for the job sufficiently to enable a permit to be obtained. This contract does not. Nor does it set out details of the required insurance (see s31(1)(l)).
5. The provisions in ss21 and 31 say that a builder “must not enter into” a non-conforming contract. I consider that that gives rise to a finding that this contract is illegal. If it is illegal, I cannot see how the deposit can be retained.
6. However also under s53(1) of the Act I may make “any order” I consider “fair” to resolve a domestic building dispute. Although the builder should

not have entered into this contract I consider it would be unfair not to reimburse him for expenses including money spent on tiles of \$1,060.00. Also he has had to pay \$960.00 GST on the deposit he received of \$10,600.00.

7. I consider it fair to order that he be paid these sums. In my view the Applicant was precipitous in ending this contract. All could have turned out satisfactorily if there had not been a communication breakdown between the parties. I accept that the Respondent did intend to build a house for the Applicant to the latter's liking.

8. It is true that I have no actual counterclaim on file before me but bearing in mind the provisions of s97 of the *Victorian Civil and Administrative Tribunal Act 1998* I regard it as fair also that I should order, notwithstanding this, that the builder be refunded the total of these sums. In cases where parties are not represented it is important to proceed without undue formality and technality and to have regard to the substantial merits of the dispute especially where the monetary amounts involved are not great. I rely, therefore, both upon s53(1) of the 1995 Act and s97 of the 1998 Act. As well, in any event, it seems to me that the Respondent's position is one where I should allow an equitable defence to sound in a claim for repayment of expenses brought about by the untimely termination of the contract. Nothing in the 1995 Act, I am satisfied, prevents me from

ordering this. It would be unfair, considering s97, if I did not proceed so to order.

9. Accordingly I order the Respondent to pay the Applicant the sum of \$10,600.00.

10. Accordingly, also I order the Applicant to pay the Respondent the sum of \$2,020.00 after he has been paid the refund of his deposit.

SENIOR MEMBER D. CREMEAN