



SUMMARY

Case: Dixon & Anor v Dixon & Ors – PROCEDURAL ORDER NO. 2

File No: TRI 2009-101-000026/ DBH 05690

Court: WHT

Adjudicator: R Pitchforth

Date of Decision: 4 August 2009

Background

This Procedural Order deals with the applications for joinder and removal of certain parties. In particular, the Tribunal deals with the joinder of a director of a building certifying company which has been struck off.

Applications for Removal

First Respondents – Trustees of the Peter Dixon Family Trust

The trustees of the Peter Dixon Family Trust (Trust) abandoned their application for removal in accepting that it was not appropriate to remove a cause of action in a process designed to ascertain the parties

Fourth Respondent – Mr Cook

Mr Cook applied for removal on the grounds that the allegations made against him were incorrect. He has been and still is a commission salesperson for Key Homes Tauranga Ltd (Key Homes) and was not and never has been the project manager, constructor, foreman or otherwise involved in the construction. Mr Cook's name appears on some documents as he was involved in obtaining consent for Key Homes as part of the sales process. The third respondent confirmed this position. Although a historical search showed that Mr Cook was a registered proprietor of the property and that he was a temporary trustee of the Trust, there was no evidence that he took any steps as a trustee that would affect this matter. The Tribunal held that the claim against Mr Cook was unlikely to be successful and he was thereby removed.

Applications for Joinder

Bay Building Certifiers Ltd

The second respondent, Key Homes Tauranga Ltd (Key Homes) abandoned their application to join Bay Building Certifiers Ltd (BBC Ltd) as it has been struck off.

Mr Wellington

Key Homes filed an application to join Mr Wellington on the grounds that he was a director of BBC Ltd and in that capacity he owed a duty of care in the inspection of the dwelling to ensure that it complied with the Building Act. Failure to do so contributed to weathertight issues in the dwelling. The scheme of the Building Act 1991, particularly section 56, was to make building certifiers liable in tort for any negligent issuing of a building certificate or Code Compliance Certificate. The silence in the Act relating to employees or officers of building certifiers was based on the intention for legal liability to rest with the building certifiers who were required to hold adequate insurance. There was also no evidence that Mr Wellington undertook any inspection or took part in the supervision of the construction. Mr Wellington was also not shown

to have personally assumed responsibility for any part of the project apart from signing the form. The Tribunal was therefore not satisfied that it was desirable to join Mr Wellington. The application was therefore declined.

AHI Roofing Ltd

Key Homes filed an application to join AHI Roofing Ltd on the grounds that it constructed the roof and the assessor had identified flashing issues identified that the roof installation caused the leaks. AHI opposed the application on the basis that Key Homes had not provided reasonable evidence of its breach of duty and a causative link to the remedial work required. AHI pointed to parts of the assessor's report to show that there were no defects in its workmanship. The Tribunal was satisfied that there was insufficient evidence to show that AHI or its subsidiaries or agent have any responsibility for the leaks. AHI Roofing Ltd was not joined

Mr Veltman

Key Homes filed an application to join Kim Veltman on the grounds that he prepared plans and was paid for by Mr Dixon. Key Homes argued that the plans, together with the site plan and the specifications were sufficient to obtain a building consent, and therefore Mr Veltman should be liable if the plans were inadequate. The assessor's report showed that there were design issues. Mr Veltman prepared plans for Fyfe Homes Townhouses. Mr Dixon expressed an interest in the designs and the plans were provided to Mr Dixon. The plans contained a notice that the information on the drawings remained the property of Mr Veltman and cannot be reproduced without written permission. The Tribunal declined the application to join Mr Veltman because:

- Mr Dixon did not disclose to Mr Veltman or seek his permission to use the plans for part of another project
- Mr Dixon did not acquire a duty of care if his plans were used in breach of the terms in which they were given and in breach of copyright
- Mr Veltman knew nothing about the use of the plans until the current claim
- Mr Veltman did not prepare the site plan, specifications, working drawings or any other documentation for the Council
- Mr Veltman did not arrange engineering services
- The house as constructed varied from the plans
- Mr Veltman owed no duty of care to any of the parties in relation to the preparation of plans for Fyfe Homes

Western Bay of Plenty District Council

Key Homes elected not to pursue this application

Ryan Group Ltd

Key Homes filed an application to join Ryan Group Ltd on the grounds that it supplied and installed the joinery identified by the assessor as the cause of the leaks. The Tribunal was satisfied from the information that it was desirable for Ryan Group Ltd to be joined as a further respondent

Result

With the exception of the application to join Ryan Group Ltd, all other joinder applications were declined.

Mr Cook was successful in his application for removal from these proceedings.