



SUMMARY

Case: Hearn & Ors v Parklane Investments Ltd & Ors – COSTS DECISION

File No: TRI 2008-101-000045/ DBH 05356

Court: WHT

Adjudicator: R Pitchforth

Date of Decision: 23 June 2009

Background

A number of parties sought costs in relation to the part of this matter that has already been determined – ie the Tribunal's Interim Determination dated 30 April 2009.

Claim for Costs

- The claimants sought costs against the Council on the grounds relating to the Council's denial of a duty of care and the way it dealt with the expert evidence
- The second respondent (EMPA Group Consultants Ltd) sought costs against the claimants and the Council on the grounds that it always maintained that it did not carry out, supervise, inspect or certify the defective work or do anything that caused water to penetrate the house
- The seventh and eighth respondents (Mr Millage and Barry Millage Architects Ltd) sought costs against the Council on the grounds that its claims were without substantial merit

Summary of Decision

Jurisdiction of the Tribunal to award costs

The Council submitted that pursuant to s91, no costs orders should be made as the relevant determination is only interim and accordingly the Tribunal has no jurisdiction to award costs at this stage. The Tribunal considered that although the issue relating to the tenth respondent's involvement is still outstanding, the findings of liability against the first to ninth respondents were final. The Tribunal accordingly rejected the Council's argument as section 91 only pertains to the grounds to be considered by the Tribunal in determining whether or not costs ought to be awarded against a party. Section 91 does not preclude the Tribunal from awarding costs only after a final determination has been issued. The Tribunal envisaged that if this were the purpose of s91, Parliament would have expressly stated it.

Claimants' claim for costs

The Tribunal found that the issue of whether the Council owed the claimant a duty of care did not meet the test of being unnecessary because it was a matter that was clearly in dispute which could only be determined at an adjudication hearing. The Tribunal found that the Council's lack of experts' briefs for the experts' meeting, the lack of acceptance of the experts' conclusions, and a continual unsuccessful attack on the expert evidence generally extended the hearing. The Tribunal therefore awarded costs to the claimants for the amount of \$10,666.00 for one day of counsel's time, a contribution towards the experts' costs of remaining at the hearing unnecessarily and the costs of the rebuttal evidence given before the Council withdrew that line of defence.

EMPA's claim for costs

The Tribunal found at the start of the hearing there was no evidence and no likelihood of evidence being produced showing that EMPA was liable. To continue past this time against EMPA was therefore to pursue a claim without substantial merit. The Tribunal therefore held that EMPA's claim for costs met the statutory test and therefore awarded costs to EMPA for the amount of \$7,680.00 payable as to two-thirds by the claimants (\$5,120) and one third by the third respondent (\$2,560)

Mr Millage and Barry Millage Architects Ltd's claim for costs

The Tribunal found that this claim for costs met the test in s91 and that the Council should pay costs to Mr Millage and his company in the amount of \$6,250. The Tribunal noted that the failure to be granted removal in the face of opposition is no indication that the claim will have merit when the evidence is considered.

Result

The claimants are to pay EMPA \$5,120 for costs

The Council is to pay the following:

- Claimants \$10,666
- EMPA \$ 2,560
- Mr Millage and Barry Millage Architects Ltd (jointly) \$ 6,250