

**CLAIM NO: TRI-2007-101-000031**

**UNDER** the Weathertight Homes Resolution  
Services Act 2006

**IN THE MATTER** of an adjudication

**BETWEEN**            **Timothy John Scott**

Claimants

**AND**                    **Bronwyn Hardaker**

First Respondent

**AND**                    **Eliot Sinclair  
&Partners Limited**

Second Respondent

**AND**                    **T J Hooper**

Third Respondent

**AND**                    **Christchurch City  
Council**

Fourth Respondent

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**ORDER OF THE TRIBUNAL**

**Dated 4 October 2007**

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## **1. Conference**

1.1. I convened a conference on this claim on 26 September 2007.

Those present were:

- Roger Pitchforth, Tribunal Member,
  - Moana Mihaka, Jurisdiction Manager,
  - Claimant Timothy John Scott.
  - Claimant representative Mr Craig O'Connor
  - First Respondent representative Mr Owen Paulsen
  - Second Respondent representative Brendan McCashin
  - Third Respondent representative Mr Phil Jayes
  - Fourth Respondents Mr John Buchan (CCC), Rhelda Fourie and Paul Robertson (Heaney & Co)
- 1.2. A schedule showing the names and addresses of the parties and their counsel or representatives is attached.

## **2. Jurisdiction**

2.1. Following the issue of Procedural Order No 1 the parties have made submissions on Mr. Scott's right to proceed with the adjudication.

2.2. It is common ground that the claimant sold the property which is the subject of the claim on 5 January 2005.

2.3. The respondents submit that this removes the tribunal's jurisdiction to proceed with the claim. Mr. Scott wishes to proceed with the claim and asserts jurisdiction.

2.4. Section 60 of the Weathertight Homes resolution Act 2006, (the act), provides

*60 Right to apply for adjudication of claims*

*(1) The owner of a dwellinghouse has the right to apply to the tribunal to have the claim adjudicated if it is an eligible claim.*

- 2.5. Mr. Scott's claim was accepted as an eligible claim under the 2002 Act and after the commencement date for the new Act he applied for adjudication on 13 July 2007. When he applied for adjudication he was no longer the owner of the dwellinghouse which was the subject of the claim.
- 2.6. Mr. O'Connor for Mr. Scott submitted that as the claim met the criteria set out in s7(2) of the former act and neither mediation nor adjudication of the claim has been initiated under the former act, by s 134, Subpart 4 applies to this claim. (Mr. O'Connor suggested that there might have been an application under the former Act and provided that there might have been an application under the former Act and provided correspondence. This was not taken further so I find that s 134 applies to this application.)
- 2.7. Mr. O'Connor then argues that s 135 makes it clear that the claim can continue.
- 2.8. Section 135 reads:-

*135 How part 1 applies to claim*

*(1) Part 1 applies to the claim as if it was one brought under this Act and that it reached the same stage, or the nearest equivalent stage, under this Act, and, in particular, any adjudication of it must be undertaken by the tribunal, on an application under s 62 to have it adjudicated.*

*(2) This section applies even if the claim does not comply with s 13 (eligibility criteria).*

*(3) This section is subject to sections 135 – 141.*

- 2.9. Mr. O'Connor submits that accordingly the tribunal must undertake adjudication of the claim under s 62. He finds further support for his view in ss (2) that shows that the right to adjudication overrides the need for eligibility.
- 2.10. Under the 2006 Act there are two jurisdictional steps. The first is the making of a claim by asking for an assessor's report. Mr. Scott has done this and been found eligible. The equivalent stage is that set out in s 48 where the Chief Executive confirms that a claim is eligible.

- 2.11. Owners who have been found eligible have the right to apply for adjudication of their claim under s 60 (1). In the rest of the section the applicant is called the claimant. 'Claimant' is defined in s 8 as a person who applies to the Chief Executive to have an assessor's report prepared in respect of a building.
- 2.12. Mr. O'Connor says that to deprive a claimant of the right to proceed to adjudication after the transition date just because they are not the owner is to put a gloss on the legislation which is not warranted. He points out that s 62 takes up the process by referring to the 'claimant', a status which Mr Frost retains.
- 2.13. Mr Robertson for the fourth respondent submits that the provisions in the act preserved Mr Scott's rights so long as he was the owner of the dwellinghouse. The transition provisions allowed him to avoid reassessment which would have otherwise been required under s 13. He disagrees with Mr O'Connor and submits that Mr Scott cannot avoid the requirement of s 14 that he be the owner of the dwellinghouse.
- 2.14. Mr Robertson also points to the purpose of the statute which is *to provide owners of dwellinghouses that are leaky buildings with access to speedy, flexible, and cost effective procedures for assessment and resolution of claims relating to those buildings* (s3). He submits that those who are not owners have different interests.
- 2.15. Ms Dwight for the first respondent and in opposition to the claim continuing points out that s 55 provides for the termination of a claim by an owner who transfers their property after the transition date, reinforcing the view that the legislation is provided only to assist owners.
- 2.16. The point for decision is whether the reference to 'claimant' in s 62 assumes that a claimant who has been found eligible before transition is bound by the requirement in s 60 that the applicant to the tribunal has to be the owner of the dwellinghouse.
- 2.17. I consider that s 60 sets out a precondition to the procedure to be followed in s 62. It is necessary to have the right to apply for adjudication before initiating adjudication.

2.18. Accordingly I find that the claimant, not being the owner of the dwellinghouse which is the subject of the claim, does not have the right to apply for adjudication.

2.19. The proceedings are therefore terminated.

**DATED** the 4<sup>th</sup> day of October 2007.

**Roger Pitchforth**

Tribunal Member