



FORM 5A

Rule 5.02(1)

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

No. S_ECI 2024 00280
Case: S_ECI 2024 00280

Filed on: 03/07/2024 10:08 AM

B E T W E E N

BARRY BERIH

Plaintiff

and

HOMES VICTORIA ~~STATE OF VICTORIA AND OTHERS ACCORDING TO THE ATTACHED SCHEDULE~~

~~First to Third~~ Defendants

AMENDED WRIT

Date of Document: ~~24 January~~ 28 June 2024
Filed on behalf of: The Plaintiff
Prepared by:
Inner Melbourne Community Legal
2/508 Queensberry Street
North Melbourne VIC 3051

Solicitors Code: 6902
Telephone: (03) 9328 1885
Ref: Louisa Bassini
Email: louisa.bassini@imcl.org.au

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See www.supremecourt.vic.gov.au; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED ~~24 January~~ 28 June 2024

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

SCHEDULE OF DEFENDANTS

STATE OF VICTORIA

First Defendant

HARRIET SHING MINISTER FOR HOUSING

Second Defendant

HOMES VICTORIA

Third Defendant

B E T W E E N

BARRY BERIH

Plaintiff

and

HOMES VICTORIA

Defendant

**REFORMULATED GENERAL INDORSEMENT OF CLAIM
PROVIDED TO HOMES VICTORIA ON 17 JUNE 2024**

Date of Document: 28 June 2024
Filed on behalf of: The Plaintiff
Prepared by:
Inner Melbourne Community Legal
2/508 Queensberry Street
North Melbourne VIC 3051

Solicitors Code: 6902
Telephone: (03) 9328 1885
Ref: Louisa Bassini
Email: louisa.bassini@imcl.org.au

The parties and the group members

1. The Plaintiff (**Mr Berih**) is a longstanding public housing tenant living in North Melbourne's Alfred Street Tower and is party to a rental agreement with the Third Defendant (or its predecessor) (**Homes Victoria**). He is able to sue and be sued.
2. Homes Victoria is a body corporate established under section 9(2) of the *Housing Act* 1983 (Vic) (**Housing Act**) and is able to sue and be sued.
3. Mr Berih commences this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act* 1986 (Vic) on his own behalf, and on behalf of the following persons (**Group Members**):
 - (a) persons who are party to a rental agreement with Homes Victoria (or its predecessors); and
 - (b) pursuant to that rental agreement, possess the entitlement to occupy and exclusively possess an apartment within one of three public housing towers

located at 33 Alfred Street, North Melbourne, 120 Racecourse Road, Flemington, and 12 Holland Court, Flemington (**Towers**).

4. At the date of the commencement of this proceeding, there were more than seven Group Members.

Homes Victoria's decision to demolish the Towers

5. On or around 18 September 2023, Homes Victoria submitted a proposal to Cabinet for the demolition of the Towers. Cabinet, acting in its policy making role, considered the submission and approved the proposal.

Particulars

See Affidavit of Simon Newport sworn 5 March 2024, paragraphs [4]-[5].

Homes Victoria has refused to disclose the submission to the Group Members, and has claimed that the submission is subject to cabinet privilege.

The submission and Cabinet's policy determination is in-part reflected in a document, Victoria's Housing Statement', signed by Premier Daniel Andrews and dated 20 September 2024.

Further and better particulars may be provided upon the production of the submission or equivalent documentary evidence, or after the exchange of evidence.

6. Immediately following Cabinet's policy approval, and acting with regard to it, Homes Victoria decided itself to proceed to demolish the Towers (**Decision**).

Particulars

See Affidavit of Simon Newport sworn 5 March 2024, paragraphs [10]-[16]. The Decision is to be inferred by the actions of Simon Newport deposed to therein.

See also the letter of Mr Newport dated 27 November 2023 (Exhibit LB-16), in which Mr Newport makes representations going to the Department of Families, Fairness and Housing's considerations which led to the Decision.

Further and better particulars may be provided upon the production of documentary evidence going to the Decision, or after the exchange of evidence.

Homes Victoria's power to demolish under section 15(a)

7. By section 15(a) of the Housing Act, Homes Victoria is vested with a power to develop land vested in it.

8. The Towers are vested in Homes Victoria, who is the registered proprietor of the Towers.
9. By dint of the definition of “*land*” in section 4 of the Housing Act, the Towers are “*buildings*” and therefore “land” for the purposes of section 15(a).
10. By dint of the definition of “*development*” in section 4 of the Housing Act, a demolition of a building is an exercise of the power to “develop” for the purposes of section 15(a).
11. In the premises, the Decision was a decision to demolish the Towers, made under section 15(a).

PTWF Action Plans

12. By section 15(b) of the Housing Act, Homes Victoria is vested with a power to manage the Towers.

Particulars

Mr Berih refers to and repeats paragraphs 8 and 9 above.

13. As an exercise of its management power under section 15(b), Homes Victoria promulgated two Paving The Way Forward Local Action Plans for the Towers, namely:
 - (a) “*Local Action Plan 2022-2023: Paving the Way Forward Flemington*”; and
 - (b) “*Local Action Plan 2022-2023: Paving the Way Forward North Melbourne*” (**PTWF Action Plans**).
14. By the PTWF Action Plans, Group Members are entitled to a consultation and decision making process in accordance with a Empowered Renter Decision Making Model.

Particulars

See pages 13 and 29 of both PTWF Action Plans.

15. The PTWF Action Plans had been promulgated and were in force when Homes Victoria made its Decision.

Error

16. It was a jurisdictional precondition to the Decision that Homes Victoria would:
 - (a) give Group Members prior notice of the Decision, and an opportunity for them to be heard;

(b) do so in accordance with the Empowered Renter Decision Making Model established by the PTWF Action Plans.

17. The Decision was made:

(a) without any prior notice afforded to the Group Members;

(b) without hearing from the Group Members; and

(c) without regard to the Empowered Renter Decision Making Model established by the PTWF Action Plans.

18. In the premises, the Decision was denied Group Members procedural fairness, and is thus invalid.

19. Further or in the alternative, the Decision failed to take into account Homes Victoria's obligation to make the Decision in accordance with the Empowered Renter Decision Making Model established by the PTWF Action Plans, and is thus invalid.

The Group Members' Human Rights

20. Homes Victoria is a public authority for the purposes of section 4(1)(a) or (b) of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (**Charter**).

21. The Decision engaged with the following human rights of the Group Members:

(a) arbitrary or unlawful interference with home and family (section 13(1));

(b) the protection of family (section 17(1));

(c) the best interests of children (section 17(2));

(d) property rights (section 20); and

(e) the right to security (section 21(1)) (collectively, the **Human Rights**).

Action incompatible with the Group Members' Human Rights

22. In the premises identified at paragraphs 16 – 18 above, the Decision was action that unlawfully interfered with the Group Members' homes and families (section 13(1), and as coloured by the Human Rights referred to in subparagraph 21(b) and (c) above).

23. Further or alternatively, the Decision an arbitrary interference with the Group Members'

homes and families in that it was made without a consultation and decision making process in accordance with a Empowered Renter Decision Making Model established by the PTWF Action Plans. In the premises, the Decision was action that arbitrarily interfered with the Group Members' homes and families (section 13(1), and as coloured by the Human Rights referred to in subparagraphs 21(b) and (c) above).

The failure to give proper consideration to the Group Members' Human Rights

24. The Decision failed to give proper consideration to the Group Members' Human Rights referred to in paragraph 21 above.
25. Proper consideration required notice to Group Members, consultation, and a decision making process in accordance with Empowered Renter Decision Making Model established by the PTWF Action Plans. The Group Members refer to and repeat paragraphs 12 to 18 above.

The common questions of law or fact

- Q1 Was the Decision invalid as alleged at paragraphs 16 to 19?
- Q2 Did Homes Victoria act in a way that was incompatible with the Group Members Human Rights as alleged at paragraphs 22 to 23?
- Q3 Did Homes Victoria fail to give proper consideration to the Group Members' Human Rights as alleged at paragraphs 24 to 25?

AND THE PLAINTIFF CLAIMS FOR HIMSELF AND ON BEHALF OF THE GROUP MEMBERS:

- A. A declaration that the Decision failed to observe the requirements of procedural fairness.
- B. A declaration that the Decision failed to observe the requirements of the Empowered Renter Decision Making Model established by the PTWF Action Plans.
- C. A declaration that Homes Victoria acted incompatibly with the Group Members' Human Rights.
- D. A declaration that the Decision failed to give proper consideration to the Group Members' Human Rights.
- E. An injunction restraining Homes Victoria from taking any future steps to implement the Decision.

- F. An injunction requiring Homes Victoria to engage in a process of consultation and decision making in accordance with a Empowered Renter Decision Making Model in respect of any further decision-making to develop or demolish the Towers.
- G. Costs.
- H. Such further or other order the Court sees fit.

28 June 2024

LEIGH HOWARD (pro bono)

Louisa Bassini
Inner Melbourne Community Legal
(pro bono)

1. Place of trial: Melbourne
2. Model of trial: Judge of the Court
3. This writ was filed for the plaintiff by Inner Melbourne Community Legal of 2/508 Queensberry Street, North Melbourne VIC 3051.
4. The address of the plaintiff is: 61/33 Alfred St, North Melbourne VIC 3051.
5. The address for service of the plaintiff is: C-/ Inner Melbourne Community Legal of 2/508 Queensberry Street, North Melbourne VIC 3051.
6. The email address for service of the plaintiff is: louisa.bassini@imcl.org.au.
7. The address of the defendant: C-/ Victorian Government Solicitors Office, Level 25, 121 Exhibition Street, Melbourne VIC 3000.