

**COURT OF APPEAL**

**GOTTERSON JA**

**Appeal No 3013 of 2017  
SC No 873 of 2017**

**GLOBAL SCRAP TRADING PTY LTD  
ABN 64 166 926 932**

**ANSAR AHAMED ABDUL BARI**

**FERROUS RECYCLING SERVICES PTY LTD  
ACN 161 399 935**

**Applicants**

**v**

**ERNEST PETER GRAVESON**

**First Respondent**

**BORON HOLDINGS PTY LTD AS TRUSTEE  
OF THE GRAVESON FAMILY TRUST**

**Second Respondent**

**BRISBANE**

**TUESDAY, 2 MAY 2017**

**JUDGMENT**

**GOTTERSON JA:** These proceedings began in circumstances where the second respondent to this application, Boron Holdings Pty Ltd, as trustee of the Graveson Holdings Trust (“Boron Holdings”), gave notice to the third appellant, Ferrous Recycling Services Pty Ltd (“Ferrous Recycling”), in Form 8 under s 131 of the *Property Law Act* 1974 (Qld) to deliver up possession

of premises situated at 38 Boron Street, Sumner. The notice was delivered on 9 December 2016 and required delivery of possession on or before 16 January 2017.

On 30 January 2017, Ferrous Recycling and others including its principal, Ansar Ahamed Abdul Bari, filed an originating application in the Supreme Court of Queensland, to which Boron Holdings as trustee and its principal, Ernest Peter Graveson, were respondents. The only substantive relief sought in the application was an interlocutory injunction restraining the respondents until further order from taking any steps to remove the applicants from the Boron Street premises.

The matter came before a judge of the Trial Division on 1 March 2017. His Honour made orders by consent dismissing the originating application and requiring Ferrous Recycling to comply with the Form 8 by 4pm on 26 April 2017. The consent orders also required the applicants to pay the respondents' costs of the application on the standard basis.

On 24 March 2017, the appellants filed in this Court a notice of appeal against the consent orders. It seeks substantive relief by way of orders setting aside the consent orders made on 1 March 2017 and, in effect, restraining Boron Holdings from evicting the appellants from the premises until foreshadowed contract-based proceedings between the appellants and the respondents are determined. One of the two stated grounds of appeal is that Mr Bari, who was represented by counsel on 1 March 2017 but was not present in court, did not, in fact, give informed consent to the orders.

On the same day, the appellants also filed an application in this Court. This document replicates the substantive relief sought in the notice of appeal. In substance, it is an application for leave to appeal to this Court against the consent orders.

More recently, on 18 April 2017, Mr Bari and Ferrous Recycling, whom I shall refer to as "the applicants", filed a document titled "Urgent application to Court of Appeal" in which a stay of

the consent orders is sought until the appeal is heard. Alternatively, a stay of those orders pending determination of the foreshadowed proceedings, or a variation of the consent orders to require compliance with the Form 8 on a date six months from 18 April 2017, are sought. The named respondents are Mr Graveson and Boron Holdings. It is this urgent application that is before the Court today. I have concluded that, for several reasons, it must be refused.

In the first place, leave as required by s 63 of the *Supreme Court of Queensland Act 1991* (Qld) has not been obtained to appeal to this Court from the consent orders. That section stipulates that an appeal to this Court from a consent order made in the Trial Division lies only by leave of the judge who made the order or, if that judge is not available, another judge in the Trial Division. Here, leave to appeal has not been obtained from the judge of the Trial Division who made the consent orders or from another judge in the Trial Division. The appeal is therefore incompetent.

I would add that, in my view, the appropriate forum for raising a complaint that the consent was not truly given is a Court constituted by the Trial Division judge by whom the consent order was made. That judge is in a position to decide whether, in all the circumstances, the orders made by consent ought to be set aside and, to that end, to make any necessary factual findings about the consent which the judge was told had been given.

Secondly, the foreshadowed contract-based proceedings have not been commenced. Until that occurs, it is impossible to assess whether the relief that might be claimed in them would affect Boron Holdings' right to immediate possession of the premises. In that state of uncertainty and uncertainty as to when such proceedings might be concluded, a stay ought not be granted pending determination of such a proceeding.

Thirdly, the applicants have not offered to make periodic payments to Boron Holdings for their continued occupancy of the premises during the period of any stay, or to provide security for the payment of compensation for any loss the respondents might sustain as a result of continued occupation of the premises by the applicants during such period.

The orders of the Court, then, are:

1. The application filed on the 18th of April 2017 is refused.
2. The applicants are to pay the respondents' costs of the application on the standard basis.