

COURT OF APPEAL

McMURDO P

No 2118 of 2002

JUSTINE LESLIE CLARKE

Respondent (Plaintiff)

and

PETER PELENYI

Appellant (Defendant)

BRISBANE

..DATE 15/03/2002

JUDGMENT

THE PRESIDENT: The applicant has applied for leave to appeal from a decision of a District Court Judge dismissing the applicant's appeal from the decision of a Magistrate at Beenleigh finding that the applicant was liable for a motor vehicle collision with the respondent awarding damages and costs to the respondent.

This is an application for a stay of the District Court Judge's order dismissing the appeal, pending the hearing of any appeal in this Court. The application is brought under UCPR rule 761 which provides:

1. The starting of an appeal does not stay the enforcement of the decision under appeal;
2. However, the Court of Appeal, a Judge of Appeal or the Court that made the order appealed from may order a stay of the enforcement of all or part of a decision subject to an appeal.

This Court has no power under that rule to stay an order the subject of an application for leave to appeal because until leave is granted there is no appeal. See *Stone v. Copperform Pty Ltd* [2001] QCA 7, CA No 11195 of 2001, 31 January 2001, QLR June 23 2001. I refuse the application at this stage. The application should, however, be adjourned to the hearing of the application for leave to appeal. If the applicant is successful in obtaining leave, the question of a stay can be considered at that time.

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