SUPREME COURT OF QUEENSLAND

CITATION:	*Mahony v Queensland Building Services Authority* [2013] QCA 323
PARTIES:	**GERARD MAHONY** (appellant) **v** **QUEENSLAND BUILDING SERVICES AUTHORITY** (respondent)
FILE NO/S:	Appeal No 2160 of 2013 DC No 1996 of 2009
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	29 October 2013
DELIVERED AT:	Brisbane
HEARING DATE:	26 July 2013
JUDGES:	Margaret McMurdo P and Gotterson JA and Douglas J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Time for filing and serving by the respondent of its Notice of Contention be extended to the date of hearing of the appeal.** **2. Appeal dismissed.** **3. Appellant to pay the respondent's costs of the appeal on the standard basis.**
CATCHWORDS:	PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – SUMMARY JUDGMENT – where the respondent is the statutory regulator of the building industry and the statutory insurer of residential building work in Queensland – where the appellant was a builder who entered into four building contracts between March 2004 and January 2005 for residential construction work – where each of the owners requested the respondent consider whether to direct rectification of building work carried out by the appellant – where each request was made contemporaneously with the giving of notice by the owner of an insurance claim which was successful – where summary judgment was given against the appellant in the District Court – where the appellant contends that the judge erred in finding that the respondent's delay in bringing the application did not preclude it from

obtaining summary judgement; that the judge erred in not giving consideration to the fact that the respondent did not file and serve a reply to the fourth amended defence before applying for summary judgment and that the judge erred in not giving consideration to the fact that the respondent did not file and serve an expert report by 4 June 2012 – whether the judge erred in giving summary judgment in favour of the respondents

PROFESSIONS AND TRADES – BUILDERS – STATUTORY INSURANCE SCHEME – where the appellant contends that the provisions of s 71(1) of the *Queensland Building Services Authority Act* 1991 required the respondent to prove that the claims arose through the fault of the appellant as an element of its recovery claim – where the appellant in their pleadings made a deemed admission to being a building contractor within the meaning of s 71(2)(a)(ii), (iii) and (iv) of the *Queensland Building Services Authority Act* 1991 but denied being a person through whose fault the claim arose – where the respondent filed a notice of contention which contends that, on its proper construction, s 71(1) did not require the respondent to establish "fault" on the part of the appellant under the second limb of the section – whether it was necessary for the primary judge to determine whether there was a triable issue concerning fault on the appellant's part for the purposes of s 71(1), in order to give judgment for the respondent

PROFESSIONS AND TRADES – BUILDERS – STATUTORY INSURANCE SCHEME – where the appellant contends that in a recovery proceeding under s 71(1), it is open to a defendant to defend the claim by challenging the legal efficacy of any step taken by the authority in the assessment of the claim – whether such matters are justiciable in s 71(1) recovery proceedings

Judicial Review Act 1991 (Qld), s 4(1), s 20
Queensland Building Services Authority Act 1991 (Qld), s 70(1), s 71(1), s 74(7)
Uniform Civil Procedure Rules 1999 (Qld), r 7(1), r 292, r 757(3)(a)

Lange v Queensland Building Services Authority [2012] 2 Qd R 457; [2011] QCA 58, cited
McNab Constructions Australia Pty Ltd v Queensland Building Services Authority [2013] QSC 57, cited
National Australia Bank Ltd v Troiani [2001] QSC 77, cited
National Australia Bank Limited v Troiani & Anor [2002] QCA 196, cited
Potter v Minahan (1908) 7 CLR 277; [1908] HCA 63, distinguished
Queensland Building Services Authority v Orenshaw & Anor [2012] QSC 241, applied

COUNSEL: P J Cosgrove (*sol*) for the appellant
B E Codd for the respondent

SOLICITORS: Cosgrove Lawyers for the appellant
Rostron Carlyle Solicitors for the respondent

[1] **MARGARET McMURDO P:** I agree with Gotterson JA's reasons for dismissing this appeal with costs.

[2] In light of the primary judge's discussion[1] of my decision in *Lange v Queensland Building Services Authority*,[2] I particularly note my agreement with Gotterson JA's observations at [37] of his reasons. In *Lange*, the builder contended at trial and on appeal that he was not liable under the insurance scheme created by Pt 5 *Queensland Building Services Authority Act* 1991 (Qld) because his clients were excluded from claiming under the scheme by cl 1.9 of the statutory insurance policy. I agreed, for the reasons given by Wilson AJA, that the primary judge rightly rejected that argument.[3] My observations,[4] on which the present appellant placed reliance at trial and in this appeal, should be understood in that context. Where the statutory insurer has made payments to those who were not entitled to claim under the scheme, I presently remain unpersuaded that parliament intended, in enacting s 71(1) *Queensland Building Services Authority Act*, to allow the insurer to recover the amount of such payments from the builder. That, however, is not the present situation where the builder belatedly sought to gainsay his already determined liability to his clients.

[3] I agree with the orders proposed by Gotterson JA.

[4] **GOTTERSON JA**: On 12 February 2013 summary judgment was given in the District Court at Brisbane in favour of Queensland Building Services Authority ("the respondent") against Gerard William Mahony ("the appellant") in the amount of $193,431.28 together with interest up to that date at 10 per cent per annum of $115,357.92. The appellant was also ordered to pay the respondent's costs of and incidental to the proceedings.

[5] By a Notice of Appeal[5] filed on 8 March 2013 the appellant appealed against the judgment. He seeks orders that it be set aside and that the respondent's application for summary judgment be dismissed. Additionally, he requests that the respondent's claim against him in the District Court be struck out.

The respondent's claim

[6] The respondent is the statutory regulator of the building industry and the statutory insurer of residential building work in Queensland pursuant to the provisions of the *Queensland Building Services Authority Act* 1991 ("QBSA Act"). In this Act, the respondent is referred to as "the authority".

[7] Part 5 of the QBSA Act establishes and regulates a statutory insurance scheme, essential features of which are that a building contractor must pay the appropriate insurance premium to the authority before commencing residential construction

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1 *Queensland Building Services Authority v Mahony* [2013] QDC 27, [17].
2 [2011] QCA 58.
3 Above, [2].
4 Above, [3].
5 AB 319-322.

work;[6] upon acceptance of the premium the authority is to issue a certificate of insurance in respect of the work and a policy of insurance comes into force for the benefit of the consumer with whom the contractor has undertaken to carry out the work;[7] a consumer may claim indemnity under the scheme by giving notice of a claim to the authority in accordance with regulations made under the Act;[8] and, significantly, for present purposes:

> "If the authority makes any payment on a claim under the insurance scheme, the authority may recover the amount of the payment, as a debt, from the building contractor by whom the relevant residential construction work was, or was to be, carried out or any other person through whose fault the claim arose."[9]

[8] The appellant was a builder licensed in the class, "Builder – Open". Between March 2004 and January 2005 he entered into four building contracts for residential construction work at Rainbow Beach. Each of the owners with whom he contracted was a consumer for the purposes of the QBSA Act. Each requested the respondent to consider whether to direct rectification of building work carried out by the appellant. Each request was made in accordance with Part 6 of the QBSA Act and contemporaneously with the giving of notice by the owner of an insurance claim in accordance with s 70(1) in Part 5 thereof.

[9] In each instance, the following sequence of events then occurred:[10] an inspection of the property was undertaken on behalf of the respondent; the respondent issued the appellant with a direction to rectify;[11] the appellant was notified of the respondent's decision that none of the work to be rectified had been satisfactorily attended to; the respondent issued to the appellant a scope of work document listing work to be carried out under the scheme to rectify or complete the defective building work; tenders were received by the respondent for carrying out the work; the respondent approved insurance for the work under the scheme in an amount commensurate with one of the tenders[12] and notified the appellant accordingly; and the respondent paid that amount to the successful tenderer upon its completing the work and rendering an invoice and upon authorisation from the owner to make the payment.

[10] For two only of the claims, the appellant sought a review by the Commercial and Consumer Tribunal of decisions of the respondent. In one case, the decision was to issue a direction to rectify and in the other, it was a decision that listed items of work that had not been satisfactorily attended to. In each review, the respondent's decisions were upheld. The appellant did not appeal either of the Tribunal's review decisions.

[11] In total, the respondent paid $193,431.88 for the claims under the scheme.[13] The amounts paid and the claims to which they relate are as follows:

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6 Section 68(1).
7 Section 69(2).
8 Section 70(1).
9 Section 71(1).
10 Affidavit D L Philip sworn 12 August 2012 para 4; AB 83-91.
11 In three instances the direction was given under s 72(7) of the QBSA Act because the appellant was not licensed at the relevant time. The direction required the appellant to cause the work to be done by a licensed contractor.
12 Under s 74(7) of the QBSA Act, the respondent may authorise work only to the extent that it is covered by a payment to be made from the scheme.
13 Affidavit D L Philp paras 4(a)(x), 4(b)(x), 4(c)(xi) and 4(d)(xi). This amount exceeds by 60 cents the amount claimed and for which judgment was given.

Coolberry Court claim	$ 9,700.00
Rumbalara Avenue claim	$11,319.00
Ibis Court claim	$95,452.88
Satinwood Road claim	$76,960.00

The last of these payments was made on 18 June 2007.

The litigation

[12] The respondent commenced proceedings in the District Court on 17 July 2009 to recover the total amount together with interest pursuant to s 47 of the *Supreme Court Act* 1995 from the appellant. As the learned judge at first instance observed, the pleadings took "a somewhat tortuous route".[14] It is unnecessary to detail it extensively here. However, it is noteworthy that on 22 November 2011, an applications judge ordered that the defence and amended defences filed on 11 September 2009, 23 July 2010, 25 October 2010 and 31 August 2011 respectively be struck out.[15]

[13] On 19 April 2012, the respondent filed a further amended statement of claim.[16] This was one day after an applications judge had ordered[17] that the appellant file and serve a further amended defence by 2 May 2012 and that the respondent file and serve any reply by 16 May 2012. This order also directed that any expert report be filed and served by 4 June 2012. The fourth amended defence was filed on 2 May 2012.[18] The respondent did not file and serve a reply to it.

[14] On 29 May 2012, the respondent filed an application for summary judgment.[19] The application was heard on 4 September 2012. As noted, summary judgment was ordered on 12 February 2013 at which time detailed reasons for judgment were delivered.[20]

The notice of appeal and grounds of appeal

[15] The notice of appeal was prepared by the appellant himself. It lists some 10 grounds of appeal. A number of these grounds overlap considerably with each other, a circumstance reflected in the fact that the appellant's written outline of submissions to this Court has dealt with a number of grounds collectively. This outline was also prepared by the appellant. However, on the hearing of the appeal, he was represented by Mr P Cosgrove, solicitor.

[16] In these reasons I propose to deal first with several identifiably separate grounds of appeal, and then turn to what Mr Cosgrove stated to be "the two primary issues" which he wished this Court to consider.[21]

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14 Reasons [2].
15 AB 248-249.
16 AB 226-246.
17 Order made 18 April 2012; AB 265.
18 AB 266-276.
19 AB 277-278.
20 AB 296-317.
21 Tr 1-6 L36.

"Practice Points" grounds of appeal

[17] Rule 292 of the *Uniform Civil Procedure Rules* ("UCPR") provides that a plaintiff may, at any time after a defendant files a notice of intention to defend, apply to the court for summary judgment against the defendant. The right to apply for summary judgment is not expressly conditioned upon either the application being made within a certain time or there having been no delay on the plaintiff's part in making the application. The words "at any time" in the rule make that clear. Moreover, as the learned judge at first instance noted, whilst delay remains relevant to the exercise of the discretion under the rule, delay in applying alone now tends not to be regarded as a sufficient reason for refusal of an application that ought otherwise succeed.[22]

[18] In any event, here, the time lapse between the first pleading of the defence, 11 September 2009, and the filing of the application for summary judgment, 29 May 2012, was largely explained by deficiencies in pleading on the appellant's part. Quite sensibly, the respondent deferred its application until the defence was in order. This point is without merit.

[19] Also without merit are two other practice points raised by the appellant. One is that the respondent did not file and serve a reply to the fourth amended defence before applying for summary judgment. The short answer to this is that the order made on 18 April 2012 did not direct that there be a reply; it merely set a date for any reply to be filed and served. The absence of a reply is an irrelevance. The respondent did not need to rely on any additional matter of fact which it had not pleaded in the further amended statement of claim, in order to make its case on the summary judgment application.[23]

[20] The other point is that the respondent did not file and serve an expert report by 4 June 2012. Again, the order made on 18 April 2012 did not direct that an expert report be filed; it merely set a date by which any expert report to be relied on by either party was to be filed and served. Significantly, this order was not one that required production for inspection of reports that were made for the respondent in the course of its administration of the claims from the owners concerned. In so far as the appellant's submissions appear to have interpreted it as so requiring, they misapprehend the order.

"Fault" issue, the respondent's pleading and the notice of contention

[21] This is the first of the appellant's primary issues. In summary, the appellant submits that the provisions of s 71(1) required the respondent to prove that the claims arose through the fault of the appellant as an element of its recovery claim. The submission is to the effect that, by virtue of the wording of the section, the respondent needed to adduce evidence of the defective work the subject of each claim and prove that it was caused by the default on the appellant's part in order to recover. A corollary of this submission is that it was open to the appellant in these proceedings to dispute the fault element of the claim.

[22] It will be recalled that s 71(1) of the QBSA Act authorises the authority to recover as a debt an insurance scheme claim payment that it makes, "from the building

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22 See *National Australia Bank v Troiani Ltd* [2001] QSC 77 at [20]; on appeal, *National Australia Bank Limited v Troiani* [2002] QCA 196 at [32]-[37].

23 It may be noted in its reply to the third amended defence filed on 9 November 2012: AB 261-264, the respondent did not plead any new matters of fact.

contractor by whom the relevant residential construction work was, or was to be, carried out or any other person through whose fault the claim arose." A question of statutory construction arises as to whether the concluding clause in the section, "through whose fault the claim arose," is intended to be part of the second (any other person) limb of the section only, or whether it is intended to qualify both that limb and the first (building contractor) limb. The answer to the question is of potential relevance to litigation under s 71(1) because it determines, in part, what the authority must prove in order to recover a debt against the building contractor concerned.

[23] The question has attained a particular relevance to these proceedings by virtue of the way in which the case was pleaded. Paragraph 18 of the further amended statement of claim appears to have been drafted upon the premise that the clause qualifies both limbs. It pleads:-

> "Pursuant to the matters pleaded in paragraphs 5 to 13 above:
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> a) the defendant is, and was at the material times, a building contractor within the meaning of section 71(2)(a)(ii), (iii) and (iv) of the QBSA Act: and
>
> b) the defendant is a person through whose fault the claim arose within the meaning of section 71(2)(b) of the QBSA Act."[24]

[24] In the fourth amended defence, the appellant did not plead to limb (a) of paragraph 18.[25] By virtue of r 166(1) of the UCPR, he was therefore deemed to have admitted the allegation in that limb.[26] However, the appellant did plead to limb (b) of paragraph 18 as follows:

> "The Defendant does not admit the allegation in Paragraph 18(b) of the Amended Statement of Claim. The Defendant states that there is no fault as required by [s 71(1)] of QBSA Act 1991 as the BSA inspector Michael Rendell was a builder with an open licence whose scope of work per Part 6 Reg 2(~~2~~)(3)(a) of Schedule 2 of QBSA Regulation 2003 does not include inspection, investigation and provision of a report."[27]

[25] The factual matter pleaded here is directly relevant to the second of the appellant's two primary issues and is considered in that context later in these reasons. The present relevance of the pleading is that it puts in issue the allegation in limb (b) of paragraph 18 of the further amended statement of claim.[28]

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24 AB 230. This paragraph is pleaded in respect of the Coolberry Court claim. Identical pleadings are made in respect of the other three claims at paras 43, 67 and 93 of the further amended statement of claim: AB 234, 239 and 244 respectively.

25 Nor did the appellant plead to limb (a) of para 93. However, the appellant did admit the allegations in limb (a) of both paras 43 and 67 of the further amended statement of claim: see paras 43 and 67 of the fourth amended defence: AB 270 and 273 respectively.

26 The appellant's contention to the contrary based upon a submission that this rule is inapplicable to a claim to recover a statutory indebtedness, is plainly untenable. The observations of O'Connor J in *Potter v Minahan* (1908) 7 CLR 277 at 301, to which the appellant referred, concern proof of a condition precedent to the arising of an offence and are inapplicable to the matter pleaded in limb (a) of paragraph 18 of the Further Amended Statement of Claim.

27 AB 268.

28 AB 268. Pleadings to the similar effect in respect of the other claims were made at paras 42, 66 and 93 of the fourth amended defence: AB 270, 272 and 275 respectively.

[26] It was in this pleadings environment that the learned primary judge gave consideration to whether a triable issue arose concerning the allegation that the appellant was a person through whose fault each claim arose. Notwithstanding, the respondent seeks leave to file a notice of contention in which it contends that, on its proper construction, s 71(1) did not require the respondent to establish "fault" on the part of the appellant under the second limb of the section. Although the notice of contention is raised beyond the time frame specified in r 757(3)(a) of the UCPR, since it concerns a matter of construction only, I would extend time under r 7(1) of the UCPR for filing and serving it.

[27] On the question of construction, it is, in my view, evident that the clause forms part of the second limb and does not qualify the first limb of the section. That, I think, is quite clearly indicated by the definitional provisions in s 71(2). Paragraph (a) thereof contains an extensive list of persons, generally licensed contractors, who, for the purposes of s 71(1), are to be regarded as the building contractor by whom any given residential construction work was, or was to be, carried out whereas paragraph (b) of the section is concerned with the composite expression "a person through whose fault the claim arose". It states that the expression "is taken to include a person who performed services for the work if the services were performed without proper care and skill". Thus, paragraph (b) focuses upon those who have performed services for the work rather than those who have contracted to carry out the work for the owner. Its focus is different from that of paragraph (a).

[28] As well, the expression "other person" in the second limb of s 71(1) indicates that the two limbs of that section are mutually exclusive. If a person falls within the first limb, they may not, at the same time, fall within the second. That circumstance aligns well with the difference in focus of the definitions to which I have referred.

[29] Also, features of punctuation tend to support the construction I prefer. Had the clause in question been intended to qualify both limbs in s 71(1), it is to be expected that commas would have been used both immediately before, and after, the phrase "or any other person" in order to indicate that the clause qualifies both limbs.

[30] The implications of this construction of the section is that it was sufficient in order to establish the appellant's liability to an action for recovery under s 71(1) that the respondent had pleaded limb (a) only of paragraph 18 of the further amended statement of claim and its analogues which the appellant either admitted or was deemed to have admitted. The pleading of limb (b) of paragraph 18 was superfluous. The non-admission of it by the appellant did not put in issue any matter of fact which it was necessary for the respondent to prove in order to recover against the appellant under s 71(1). Accordingly, it was unnecessary for the learned primary judge to determine whether there was a triable issue concerning fault on the appellant's part for the purposes of s 71(1), in order to give judgment for the respondent.

The justiciability of the "claim assessment" issue

[31] The appellant submits that in a recovery proceeding under s 71(1), it is open to a defendant to defend the claim by challenging the legal efficacy of any step taken by the authority in the assessment of the claim. Taken to its full extent, that approach would allow the defendant to challenge matters such as an inspection report, a decision to direct rectification of work, a decision that rectification work had not been satisfactorily attended to, and a decision to accept a particular tender from those submitted for rectification work.

[32] The relevance of the submission to the appellant's case is presaged by paragraph 18 and its analogues in the fourth amended defence. It will be recalled that, in those paragraphs, the appellant put in issue the competency of Mr Michael Rendell to carry out the inspections and produce reports for the respondent.[29]

[33] The submission invites consideration of whether such matters are justiciable in s 71(1) recovery proceedings. In my view, they are not for the following reasons.

[34] Section 71(1) confers a right to recover as a debt from any of the designated persons "any payment on a claim under the insurance scheme". It is sufficient for recovery under the section that the authority have made a payment on a claim under the insurance scheme. The statutory right to recover is not conditioned upon the legal quality of a determination by the authority to make the indemnity payment or of any anterior step taken by the authority that had led to the decision to pay.

[35] That is not to say that a decision to make an indemnity payment or any anterior step is not reviewable. At the relevant time, Division 3 of Part 7 of the QBSA Act conferred a review jurisdiction on the Commercial and Consumer Tribunal ("the Tribunal") with respect to the following decisions by the authority: to direct or not direct rectification or completion work on a building; that work undertaken at the direction of the authority was not of a satisfactory standard; about the scope of works to be undertaken under the statutory insurance scheme in order to rectify; and to disallow a claim under the scheme wholly or in part.[30] A decision by the authority to recover an amount under s 71(1) was not reviewable by the Tribunal. However, it was a decision which was judicially reviewable in the Supreme Court of Queensland pursuant to the provisions of the *Judicial Review Act* 1991.[31] So, too, for other anterior decisions of the authority.[32] The availability of review of those kinds and at those stages provides a sound rationale for a legislative intention that the types of decisions to which I have referred, not be justiciable in s 71(1) debt recovery proceedings. Another indicator of such an intention is that s 71 itself specifies certain defences which may be raised in proceedings under the section.[33] None of these are relevant to the kind of defence that the appellant would wish to agitate in these proceedings.

[36] The view I take of this aspect of the construction and application of s 71(1) finds support in the following observations of Margaret Wilson AJA in *Lange v Queensland Building Services Authority*:[34]

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29 That circumstance is there pleaded by the appellant as establishing that there was no fault on his part within the meaning of s 71(1). There is a logical deficiency in the pleading. Mr Rendell's competence in this regard was not relevant to, let alone determinative of, fault on the appellant's part.

30 Section 86(1)(e), (f), (g) and (h). The practical effect of s 86(2)(b) and (c) was to place a 28 day time limit on a contractor to apply for review of decisions to direct rectification or about the scope of the works to be undertaken to rectify. Examples of applications for review by the Tribunal are recounted in the litigation in *McNab Constructions Australia Pty Ltd v Queensland Building Services Authority* [2010] QCA 380 and *Baulderstone Hornibrook Pty Ltd v Beneficial Finance Corporation Ltd* [1998] QCA 430.

31 Section 4(1). See also Explanatory Notes to the *Queensland Building Tribunal Bill* 1999 p32.

32 As well, the legal validity of directions given by the authority may be adjudicated in the Supreme Court's general jurisdiction to grant declaratory relief: see *McNab Constructions Australia Pty Ltd v Queensland Building Services Authority* [2013] QSC 57.

33 Subsections 71(4), (5) and (6).

34 [2011] QCA 58; [2012] 2 Qd R 457.

> "[72] Sections 71 and 111C provide for recovery of the amount of a 'payment on a claim under the insurance scheme' rather than the recovery of the amount of a 'payment under the insurance scheme'. For this reason, I do not accept counsel for the appellant's submission that the triggering circumstance on which the respondent relies does not apply.
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> [73] The administrative decision sought to be reviewed is one about entitlement to indemnity under the statutory policy. The appellant is a person aggrieved by that decision because, in consequence of it, a payment was made to the owners and he was exposed to recovery proceedings pursuant to s 111C. He is entitled to seek judicial review of that decision pursuant to s 20 of the *Judicial Review Act* 1991."

The triggering circumstance to which her Honour was referring was the payment by the authority of the claim.

[37] I agree with these observations. I note that, in that case, McMurdo P and Ann Lyons J[35] did not express a concluded view on the matter because it had not been fully argued before them.[36] In so far as the learned President observed that it seems unlikely that Parliament would have intended for the authority to recover from building contractors payments wrongly made to those insured by the authority on policies entered into under Part 5 of the QBSA Act,[37] I understand her Honour to be referring to any payment that may have been made wrongly in the sense that it was not in fact made upon a claim made validly under the Act. The language of s 71(1) would leave open scope for a defence that the payment sought to be recovered was not made upon a claim and a defence that the claim was not validly made under the Act. To my mind, the position was accurately summarised by Henry J in *Queensland Building Services Authority v Orenshaw & Anor*[38] as follows:

> "At the other extreme, it is unlikely that s 71 could be avoided by a building contractor disputing discretionary factual conclusions occurring as part of the professional judgment exercised by the QBSA in deciding whether and how much to pay in respect of a claim. It would not be enough to avoid the statutory liability imposed by s 71 for a defendant to point merely to any error of fact connected with the claim process. It must logically have been a factual error of such a nature that the claim was not, on the facts as correctly known, a claim under the insurance scheme or that the payment sought to be recovered was not a payment on such a claim."

[38] Here, the appellant failed to seek any type of review of the respondent's decisions to direct rectification on the claims or that rectification work was not satisfactorily attended to. He did not, by that means, seek to impugn Mr Rendell's reports and the respondent's reliance upon them for its decision making. He did not seek judicial

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35 At [3] and [78] respectively.
36 *Ibid*.
37 At [3].
38 [2012] QSC 241 at [38].

review of the decision to commence proceedings to recover against him under s 71(1). For the reasons given, he may not now in these proceedings, challenge those decisions on the ground he proposes.

[39] It remains to note that the appellant's criticism of Mr Rendell's competency to carry out the inspections and make the reports is misconceived. He held an open licence. True it is that that licence did not, of itself, authorise him to carry out an inspection or an investigation or provide a report. That, however, is beside the point. At the relevant time, the executive powers of the authority's general manager might have been delegated to "any officer or employee" of the authority.[39] Mr Rendell was an officer of the authority. There was no requirement that the delegate hold any particular licence or qualification.

[40] In 2007, the power was amended to one of permitting delegation to an "appropriately qualified relevant officer", the expression "appropriately qualified" being defined to include "having the qualifications, experience or standing appropriate to exercise the power."[40] The appellant's material filed for the summary judgment application did not lay any factual basis for a contention that Mr Rendell was not appropriately qualified within the meaning of this expression.

Disposition

[41] For these reasons, none of the appellant's grounds of appeal warrant success. The appeal must be dismissed. The respondent is entitled to its costs of the appeal.

Orders

[42] I would propose the following orders:

1. Time for filing and serving by the respondent of its Notice of Contention be extended to the date of hearing of the appeal.
2. Appeal dismissed.
3. Appellant to pay the respondent's costs of the appeal on the standard basis.

[43] **DOUGLAS J:** I agree with the reasons of Gotterson JA and the orders proposed by his Honour.

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39 QBSA Act s 20.

40 Section 20(2).