SUPREME COURT OF QUEENSLAND

CITATION:	*James v Council of the City of Gold Coast* [2003] QCA 221
PARTIES:	**FRANK JAMES (formerly known as FRANK FARRELLY)** (applicant/respondent) **v** **COUNCIL OF THE CITY OF GOLD COAST** (respondent/applicant)
FILE NO/S:	Appeal No 2614 of 2003 DC No 375 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Southport
DELIVERED EX TEMPORE ON:	2 June 2003
DELIVERED AT:	Brisbane
HEARING DATE:	2 June 2003
JUDGES:	McMurdo P, Davies JA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**Application dismissed with costs**
CATCHWORDS:	APPEAL AND NEW TRIAL – where application for leave to appeal judgment of District Court – where District Court judge correctly allowed appeal of Magistrate's decision – where discretion of Court of Appeal to refuse leave to appeal *Chapman v State of Queensland* [2003] QCA 172; Appeal No 1759 of 2003, 2 May 2003, cited *Ford v La Forrest* [2002] 2 Qd R 44, cited *Queensland Trustees Limited v Fawckner* (1964) Qd R 153, cited *R v Tait* [1999] 2 Qd R 667, cited
COUNSEL:	S W Sheaffe for the applicant B F Charrington for the respondent
SOLICITORS:	O'Keaffe Mahoney Bennett (Southport) for the applicant Whitehead Payne (Nerang) for the respondent

ATKINSON J: The respondent Frank James was the plaintiff in a personal injury action against the applicant, the Council of the City of Gold Coast. He claimed damages for injuries which

he said he suffered as the result of the negligence of the applicant.

The respondent was employed by the applicant at its water purification plant, 99 John Rogers Road, Mudgeeraba. As part of that employment, the respondent lived at a house on the site of the water purification plant. The house was owned by the applicant.

Access to the house was by way of a steps and a ramp which were painted with a gloss acrylic paint. The respondent had complained to the applicant about the slippery nature of the ramp. The respondent's evidence was in spite of his complaint, the respondent had advised him to fix the problem himself by repainting it with paint with sand added. This was denied by the applicant. In any event it is uncontroverted that the applicant took no steps to fix the problem about the slippery ramp and steps.

On 28 March 1999, the respondent was walking down the rear staircase to the rubbish bin when he slipped on the steps which were wet because of a sprinkler he had placed under them. He injured his right side and shoulder.

After a trial in the Magistrates Court in Southport on 27 February 2002, the Magistrate found for the defendant and dismissed the claim.

The respondent appealed to the District Court and on 25 February 2003 in a carefully reasoned judgment, the appeal was allowed and a new trial ordered.

The applicant now seeks leave to appeal to this Court pursuant to s.118 (3) of the *District Court Act* 1967. That section provides that a party who is dissatisfied with a judgment of the District Court, whether in the Court's original or appellate jurisdiction, may appeal to the Court of Appeal with the leave of this Court. This Court has an unfettered discretion to grant or refuse leave to appeal.

It is unnecessary to state compensively the factors that should be taken into account by this Court in determining whether or not leave to appeal should be granted. Two factors are most relevant to the exercise of the discretion in this case. The first is that the parties have already had the advantage of an appellant decision in the District Court (see *R v Tait* [1999] 2 QdR 667); and the second is the merits of any proposed appeal as in an application for an extension of time in which to appeal it is appropriate to consider the merits of the substantive application (see *Queensland Trustees Limited v Fawckner* (1964) QdR 153 at 163, 164; *Ford v La Forest* [2002] 2 QdR 44 at 45; *Chapman v the State of Queensland* [2003] QCA 172, Appeal No. 1759 of 2003, 2 May 2003 at [3].

In this case, the parties have had the opportunity to fully argue an appeal before the learned District Court Judge. His

Honour reserved his decision and gave a carefully reasoned decision allowing for an appeal against the Magistrate's decision which, for the reasons set out by the learned District Court Judge, was plainly incorrect in many respects.

Where, as his Honour said, so many aspects of the trial had so manifestly miscarried it was appropriate for his Honour to order the matter to be remitted to the Magistrates Court at Southport for a new trial.

In these circumstances, where the applicant seeks leave to appeal from a carefully reasoned decision of a District Court Judge, which seems to be plainly correct and which allowed an appeal against a decision from a Magistrate containing manifest errors, there seems no reasons at all to exercise a discretion to allow leave to appeal and, in my view, the application should be dismissed with costs.

THE PRESIDENT: I agree.

DAVIES JA: I agree.

THE PRESIDENT: The application is dismissed with costs.
