

SUPREME COURT OF QUEENSLAND

CITATION: *Manwin v Jakubowski & Anor* [2004] QCA 362

PARTIES: **ATANAS VASS MANWIN**
(appellant/applicant)
v
HENRY JAKUBOWSKI
(first respondent/respondent)
ROMAN TOMASZENSKI
(second respondent/respondent)

FILE NO/S: Appeal No 6016 of 2004
DC No 2470 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for leave s 118 DCA (Civil)

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 30 September 2004

DELIVERED AT: Brisbane

HEARING DATE: 30 September 2004

JUDGES: McPherson JA, Williams JA, White J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for leave to appeal dismissed with costs**

CATCHWORDS: APPEALS TO COURT OF APPEAL – LEAVE TO APPEAL – where the Building Tribunal ordered the applicant to pay \$12,219 to the respondents, for work they completed under a contract – where appeal by the applicant to the District Court dismissed – whether there is any reason to grant leave to appeal

COUNSEL: The applicant appeared on his own behalf
The respondents appeared on their own behalf

SOLICITORS: The applicant appeared on his own behalf
The respondents appeared on their own behalf

McPHERSON JA: The applicant for leave to appeal from the District Court is Mr Manwin. He contracted to replace certain concrete surfacing around a building in the City. The

contract required that the concrete be polished and decorated. For this purpose he employed the respondents, Mr Jakubowski and Mr Tomaszewski as his sub-contractors.

The architect in control of the project was dissatisfied with the work and refused to certify for payment. Mr Manwin thereupon refused to pay the respondent sub-contractors. They made a claim against him in the Building Tribunal which awarded them \$12,219 plus interest and costs. An amount of \$750 was disallowed because the work had not been completed when they ceased work.

Essentially the dispute before the Tribunal came down to this. Mr Manwin said the respondents' polishing work was poor quality and incomplete. The respondents said that, if this was so, it was because of the poor quality of the concrete laid by Mr Manwin on which they had to work which was cracked. They called evidence to this effect, which the Tribunal member accepted.

Mr Manwin appealed to the District Court, where his appeal was heard but dismissed by Judge McGill in a considered judgment which he gave in written reasons. Now he seeks leave to appeal again, this time to this Court.

Leave to appeal will not be granted by this Court in a case such as this. The issue between the parties before the Building Tribunal was one of fact. The amount involved, although no doubt substantial to the parties, is, objectively

speaking, rather small. The intention of the legislature, that is the Parliament of Queensland, is that disputes of this kind be determined by the Building Tribunal, with a right of appeal to the District Court.

There is no further right of appeal to this Court except by special leave from this Court. Leave is not granted by this Court to appeal in circumstances such as these unless some good reason is shown for interposing this Court in the dispute being litigated. That will seldom be so if the question is, as it is here, essentially one of fact. In my view, no reason has been shown why this Court should take up this appeal. The application for leave to appeal should, in my opinion, be dismissed with costs.

WILLIAMS JA: The applicant appealed unsuccessfully to the District Court pursuant to section 92 of the Queensland Building Tribunal Act 2000 from a decision of the Building Tribunal. He now seeks leave to appeal to this Court pursuant to section 118 subsection 3 of the District Court Act. In my view there are no grounds established justifying the grant of leave. The application should be dismissed.

WHITE J: I agree.

McPHERSON JA: The application for leave to appeal against the decision of Judge McGill is dismissed with costs.
