SUPREME COURT OF QUEENSLAND

CITATION:	*Praxis P/L v Hewbridge P/L & Anor* [2004] QCA 79
PARTIES:	**PRAXIS PTY LTD** ACN 010755030 (plaintiff/respondent) v **HEWBRIDGE PTY LTD** ACN 010647560 (first defendant/applicant) v **PKF INVESTMENT SERVICES PTY LTD** ACN 011007051 (second defendant/applicant)
FILE NO/S:	Appeal No 547 of 2004 DC No 229 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Mackay
DELIVERED ON:	26 March 2004
DELIVERED AT:	Brisbane
HEARING DATE:	9 March 2004
JUDGES:	McPherson and Jerrard JJA and McMurdo J Judgment of the Court
ORDER:	**Application dismissed with costs**
CATCHWORDS:	PROCEDURE – QUEENSLAND – DISTRICT COURTS – CIVIL JURISDICTION – APPEAL AND NEW TRIAL – APPEAL TO SUPREME COURT – FROM WHAT DECISIONS AND ON WHAT GROUNDS – where applicants seek leave to appeal after judgment given in District Court for $49,596 after $54,600 claimed for misrepresentation about suitability of land – whether judgment equal to or more than jurisdictional limit – whether judgment is for or relating to property equal to or more than jurisdictional limit – whether it is reasonably arguable that there is a right of appeal – whether there is any reason to grant leave to appeal *District Court of Queensland Act* 1967 (Qld) s 118(2), s 118(3), s 118(5) *Schiliro v Peppercorn Child Care Centres Pty Ltd* [2000] 2 Qd R 83; [1998] QCA 446 distinguished

COUNSEL: G F Crow for the applicants
R W Morgan for the respondent

SOLICITORS: Macrossan & Amiet (Mackay) for the applicants
McKays (Mackay) for the respondent

[1] **THE COURT:** This is an application for leave to appeal against a judgment given after a trial in the District Court at Mackay. The judgment was for a total amount of $49,596 and was given on 24 December 2003. It has been assumed by the parties, no doubt correctly, that at that date the provisions of the recently amended s 118(2) of the *District Court of Queensland Act 1967* applied to this application. The amendment was effected by the *Justice and Other Legislation Amendment Act 2003* (Act no 77 of 2003), which took effect on 8 December 2003.

[2] As amended at that date, s 118 provided, so far as material, that:

"**(1)** …

(2) A party who is dissatisfied with a final judgment of the District Court in its original jurisdiction may appeal to the Court of Appeal if the judgment -

(a) is given for an amount equal to or more than the Magistrates Courts jurisdictional limit; or
(b) relates to a claim for, or relating to, property that has a value equal to or more than the Magistrates Courts jurisdictional limit.

(3) A party who is dissatisfied with any other 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 that court.

(4) …

(5) If it is reasonably arguable that a right of appeal under this section exists, the Court of Appeal may treat that circumstance as a ground for granting leave to appeal."

[3] Before that amendment, s 118(2) provided for an appeal by right from a final judgment of a District Court if the judgment -

"(a) is given -

(i) for an amount equal to or more than the Magistrates Courts jurisdictional limit; or
(ii) in relation to a matter at issue with a value equal to or more than the Magistrates Courts jurisdictional limit; or

(b) involves directly or indirectly any claim, demand or question in relation to any property or right with a value equal to or more than the Magistrates Courts jurisdictional limit".

The provisions, as they were then, of s 118(2)(b) were based on s 35(1)(b) of the *Judiciary Act 1903* (Cth) regulating appeals to the High Court from State Supreme Courts and ultimately on comparable rules governing appeals to the Privy Council. In a number of respects, however, those provisions were found not to afford sufficient guidance about the right to appeal in various circumstances. There were decisions of this Court, including *Schiliro v Peppercorn Child Care Centres Pty Ltd* [2000] 2 Qd R 83, in which the question was whether the amount claimed in the action might be the determining, or at least a relevant, factor in deciding whether an appeal existed under s 118(2)(b).

[4] In the present case, the action in which judgment was given for the plaintiff, who is the respondent to this application, was for damages under s 53A(1)(b) of the *Trade Practices Act 1974* (Cth) arising out of conduct comprising the making of a false or misleading representation in connection with the sale of land, or in the promotion of that sale, concerning the characteristics of the land or the use to which it was capable of being put. The land was a vacant industrial allotment, which before the sale was owned by the first and second defendants (who together are the applicants before us) who in the pre-sale negotiations were acting through the agency of a Mr Neil Parkin. The learned judge found that, in the course of those negotiations, Mr Parkin represented to the plaintiff's managing director Mr Pallot that the land was suitable for a building of the type that Mr Pallot had in mind, and that the lot could be built on up to the boundary line with the adjoining allotment, which was or had been also owned or developed by the applicant defendants. In fact, there was an underground sewer pipe laid in incompletely compacted soil in the vicinity of the boundary; and the plaintiff had to expend money in installing concrete piles to stabilise the foundations of the building when it came to be constructed after the contract had been completed.

[5] The amount of the damages awarded, for which the judgment of $49,596 inclusive of interest[1] was given, represented the total cost of that work, which was less than the amount of $54,600 plus interest which had been claimed by the plaintiff in the action. It was also less than the jurisdictional limit of $50,000 applicable in the Magistrates Court that is referred to in s 118(2)(a) and (b) of the *District Court of Queensland Act 1967*. On that footing, the defendants need the leave of this Court to appeal against the judgment. But, it is submitted by Mr Crow of counsel for the applicant defendants, his clients are entitled to appeal as of right under s 118(2)(b) of the amended Act. The application before us now has been brought to confirm that view of the provision or, if necessary, to obtain leave to appeal.

[6] To bring themselves within s 118(2)(b), the defendants must show that the judgment sought to be appealed from "relates to a claim for, or relating to, property that has a value equal to or more than" $50,000. As to that requirement, the applicants say it is satisfied here by the fact that the plaintiff's claim in the action was for $54,600, and that that is sufficient to bring it within s 118(2)(b) even if the judgment ultimately given was for only $49,596. It is argued, therefore, that the legislative amendment late last year had in that respect chosen to confirm the approach, which found favour in *Schiliro v Peppercorn Child Care Centres Pty Ltd*

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1. In calculating whether a judgment is given for an amount equal to or more than the Magistrates' Court jurisdictional limit, it is the judgment sum excluding interest and costs which is relevant: see *Van Riet v ACP Publishing Pty Ltd* [2004] 1 Qd R 194 at 200 [18]- [21] and 204 [45] - [46].

[2000] 2 Qd R 83, of treating the amount claimed in the action as prima facie determinative of the existence of a right to appeal under s 118(2)(b) as it then stood.

[7] In our opinion, however, this is clearly not so. Section 118(2)(a), in a case to which it applies, makes the right to appeal depend on whether the judgment is for, or for more than, $50,000, which is the relevant jurisdictional limit. As we have said, the judgment here does not satisfy that requirement. To make it appealable as of right under s 118(2)(b), the judgment must relate to a claim for, or relating to, property having a value equal to or more than $50,000. As to that, the applicants say that the price for which the land was sold was $157,500. It may be accepted that market price is the best evidence of value, although in the present case some discount might have to be made for the cost of the work required to put the land into usable condition. But, in any event, it was not the land that was being sued for, but the conduct or representation of the defendants' agent with respect to its characteristics or the use to which it could be put. In no sense was the land itself being claimed. It was not what the claim in the action was "for", as might perhaps have been the case if, for example, the proceedings had been for recovery of the land from someone wrongly in possession of it, or possibly for specific performance of the contract for sale of the land.

[8] The criterion adopted in s 118(2)(b) is concerned not with simple money claims in personal actions like the present, which can be measured by the amount recovered by the judgment; but primarily with claims for the recovery of land or other things *in specie* or their value in actions for detinue and the like. The legislative history of s 118 and its predecessor s 92 of the Act bears this out. It is true that s 118(2)(b) includes not only a claim "for" property having the value specified but also to a claim "relating to" property of that value. But the words "relating to", although susceptible on occasions of a wide interpretation, take their meaning and colour from the context in which they appear. An action under s 82 of the *Trade Practices Act* to recover the amount of the loss or damage caused by a contravention of s 53A of that Act is not, within the meaning of s 118(2)(b) of the *District Court of Queensland Act*, a claim relating to property even if the representation constituting the contravening conduct concerned property valued at more than $50,000. If that were not so, a claim for damages itself insignificant in amount for a temporary or casual trespass to land worth millions of dollars would be appealable as of right under s 118(2)(b). The same would apply, for instance, to slight damage inflicted on an unusually expensive motor car or other valuable property.

[9] The appellants also rely on s 118(5) submitting that it is nevertheless "reasonably arguable" that a right of appeal under s 118(2)(b) exists, and that this Court should treat that circumstance as a ground for granting leave to appeal. We are, however, for the reasons already given, satisfied that it is not arguable that such a right of appeal exists here. Having once determined that s 118(2)(b) does not bear the interpretation contended for by the applicants, their contention ceases under s 118(5) to be arguable whether reasonably or otherwise.

[10] The applicants have nevertheless persisted in contending that the judgment below was wrong in many and perhaps all respects, and that the defendants' prospects of succeeding in an appeal are good. We are, however, far from persuaded that this is so. There was evidence which the trial judge accepted, and on which he was entitled to act, that the representation sued on was made by or on behalf of the

defendants; that it was false; that the plaintiff acted or relied on it in purchasing the land; and that it suffered loss and damage as a result of doing so.

[11] The only flaw that may possibly have been identified by the applicants in the learned judge's findings concerned the pre-contractual statement of suitability of the lot as a site for the building which it was intended to construct on it. The context of the statement was a discussion between Mr Pallot and Mr Parkin about how close to the boundary the Council might permit the building to be constructed. It was submitted that the statement about its suitability was confined to that subject, and ought not to have been understood as referring to the suitability of the subterranean condition of the land. Whether or not that was so, the statement was capable of bearing the wider meaning and application which his Honour gave to it; and, being a question of fact, it was a conclusion which it was open to the trial judge to arrive at. The applicants' arguments as to causation or as to reliance, as they described this issue, are advanced in the face of credible evidence for the respondent that it would not have purchased the land had it known the truth of what was found to have been misrepresented. As to damages, the applicants do not wish to challenge the assessment as involving any error of law, but instead they wish to debate the appropriateness of the sums allowed according to what they accept was a legitimate approach to the assessment.

[12] In no respect in which it was suggested that the judgment is erroneous was anything identified that would lead this Court to exercise the discretion to give leave to appeal against it. The fact that an error of fact or law arguably has occurred in the reasons leading to the judgment is not itself necessarily enough: if it were, there would be no point in imposing the additional requirement of obtaining leave to appeal. No question is or would be raised here which, if decided by the Court of Appeal in the prospective appeal, is likely to prove definitive in any future case of this kind. The judgment was given for an amount less than the jurisdictional limit of $50,000 prescribed in s 118(2), as to which the legislature, no doubt for reasons of cost and expense, has determined there should be finality of the decision given at first instance.

[13] The application should be dismissed with costs.