Civil and Administrative Tribunal

New South Wales

Case Name:	Veney v The Owners – Strata Plan No 2245
Medium Neutral Citation:	[2023] NSWCATAP 262
Hearing Date(s):	27 July 2023
Date of Orders:	21 September 2023
Decision Date:	21 September 2023
Jurisdiction:	Appeal Panel
Before:	S Thode, Principal Member P Durack, Senior Member
Decision:	1 Leave to appeal refused. 2 Appeal dismissed. 3 No order as to costs with the intention that each party pay its own costs of the appeal.
Catchwords:	APPEAL – Strata Law – appeal against costs order and order dispensing with a hearing – discretionary decisions - no appealable error found.
Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW), Civil and Administrative Tribunal Rules 2014 (NSW), Strata Schemes Management Act 2015 (NSW)
Cases Cited:	Collins v Urban [2014] NSWCATAP 17 House v The King (1936) 55 CLR 499; [1936] HCA 40 McInnes v Rheem Australia Pty Limited [2021] NSWCA 89 Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69 Roberts v The Owners – Strata Plan No 4393 [2023] NSWCATAP 119 The Owners - SP No 2245 v Veney [2020] NSWSC 134

	ZHH v ZHI (No 2) [2018] NSWCATAP 193
Texts Cited:	None cited
Category:	Principal judgment
Parties:	Allan Veney (Appellant) The Owners – Strata Plan No 2245 (Respondent)
Representation:	Self-represented (Appellant) Strata Title Lawyers (Respondent)
File Number(s):	2023/00172412
Publication Restriction:	Nil
Decision under appeal:	
Court or Tribunal:	Consumer and Commercial Division
Jurisdiction:	NSW Civil and Administrative Tribunal
Citation:	[2020] NSWCATCD
Date of Decision:	04 May 2023
Before:	R Titterton, Senior Member
File Number(s):	SC 22/38783

REASONS FOR DECISION

1 This is an appeal from a decision of the Consumer and Commercial Division of the Tribunal, made on 4 May 2023, that the appellant pay the respondent's costs, as agreed or assessed, of strata title proceedings brought by the appellant in August 2002. Those proceedings were dismissed by the Tribunal on 17 January 2023, pursuant to s 55 (1) (a) of the Civil and Administrative Tribunal Act (CAT Act), following the appellant's withdrawal of his proceedings.

2 The costs decision was made on the papers and in his appeal the appellant also challenged the Tribunal's order, made under s 50 of CAT Act, to dispense with a hearing.

3 The appeal was, therefore, concerned with two orders. The first was an interlocutory order to dispense with a hearing and the second was an

"ancillary" decision to award costs to the respondent. An "ancillary" decision is defined in s 4 (1) of the CAT Act to include a costs order.

4 Under the CAT Act, the appellant required leave to appeal the interlocutory order to dispense with a hearing (s 80(2)(a)) and in the case of the ancillary decision awarding costs, the appellant was entitled to appeal as of right on any question of law, or with the leave of the Appeal Panel, on any other grounds (s 80 (2)(b)). Because it was an appeal from the Consumer and Commercial Division of the Tribunal, the question of leave to appeal from the ancillary decision was subject to the restrictions set out in c 12 (1) of Sch 4 of the CAT Act.

5 For the reasons set out below, we have decided that the required leave to appeal in respect of these two decisions should be refused and the appeal should be dismissed. We have also decided that the respondent's application for its costs of the appeal to be paid by the appellant should be dismissed, to the intent that each party should bear their own costs.

Background to appeal

6 The following background concerning the appeal is based upon uncontroversial aspects of the facts as, largely, set out in the Tribunal's reasons for the orders made on 4 May 2023.

7 The appellant is the owner of residential Lot 33 and parking Lot 51 in a strata scheme located in Dover Heights.

8 In 2019, the respondent commenced proceedings in the Supreme Court against the appellant in respect of a dispute that arose relating to parking, seeking declaratory relief relating to the proper construction of a by-law (Supreme Court proceedings).

9 On 27 February 2020, Darke J dismissed the respondent's claim in those proceedings and ordered the respondent to pay the appellant's costs: *The Owners - SP No 2245 v Veney [2020]* NSWSC 134 at [65].

10 The appellant was legally represented in those proceedings, but no application was made by him in those proceedings for an order under s 90 of the *Strata*

Schemes Management Act 2015 (SSMA) that the costs order be paid from contributions levied on owners of lots excluding the appellant.

11 In a letter from the appellant's solicitor (Seniors Rights Service) to the respondent's solicitor (Taitz Solicitors), dated 27 February 2020, it was proposed that the appellant not contribute to the payment of the costs order on the basis that it would be quite unjust if the successful plaintiff had to assist in the payment of the costs through levies based on unit entitlement. It was proposed that the respondent undertake to move a motion within 21 days on terms that the respondent strike a special levy for the payment of the costs, to be levied against all of the lot owners except for the appellant. It was said that should the undertaking not be forthcoming within 7 days they would have the matter relisted before Darke J so that an order on those terms could be made.

12 The respondent's solicitor replied by letter, dated 5 March 2020, which included:

> 'In line with section 90 of the Strata Schemes Management Act (NSW) the Owners' Corporation will propose a motion in the terms that you have suggested; the result of which will be that Mr Veney will not be levied for the Owners Corporation's costs of these proceedings.
>
> The administrative fund will be replenished, and Lots 33 and 51 will be excluded from the costs of such replenishment.

13 The motion was not passed at any subsequent general meeting. The appellant says it was never put by the respondent to any meeting.

14 The solicitors acting for the respective parties corresponded as to the amount of costs to be paid, a negotiated agreement was reached and, on 7 July 2020, the respondent paid costs to the appellant's solicitor.

15 In June 2020, the appellant commenced Tribunal proceedings SC 20/25740 against the respondent seeking an order under s 237 of the SSMA for the appointment of a compulsory strata managing agent.

16 On 1 February 2021, the Tribunal dismissed those proceedings.

17 As appears from the Tribunal's written reasons for decision, one of the appellant's particulars of the reasons for seeking the order was:

> That the Supreme Court of NSW had ordered the respondent to pay the applicant's costs from its failed action in that jurisdiction and that the

> respondent's solicitors had agreed that a levy would be struck in accordance with s 90 of the Strata Schemes Management Act. It is claimed the respondent has failed to pay its debts.

18 The Tribunal went on to make the following findings:

> **Category 1** relates to legal proceedings commenced by the Owners Corporation in the Supreme Court seeking orders that the applicant was not entitled to exercise his rights over a car parking space over which he held a title. Although the Tribunal has not been provided with a copy of the judgement it is noted that the Summons was dismissed with an order for costs against the respondent herein and in favour of Mr Veney. He claims that the costs have not yet been paid. It is now apparent from the respondent's submissions that the applicant's solicitors have been fully reimbursed for legal costs in a sum agreed by them and by the Counsel. There is nothing to suggest that further costs are owing and the applicant must fail in relation to that part of his claim.

19 The appellant did not appeal from this decision of the Tribunal.

20 We interpose to say that, plainly, those 2020 Tribunal proceedings provided the appellant with the opportunity to advance all claims that were reasonably available to him in the Tribunal concerning the Supreme Court costs order, the correspondence between the parties about a levy in order to pay those costs and the absence of any such levy being raised.

21 On 25 August 2022, the appellant commenced the Tribunal proceedings with which we are, currently, concerned (SC 22/38783) and in which the costs order the subject of this appeal was made. In his application, it was stated that the order sought was:

> Section 230
>
> An order giving effect to the written agreement signed by the parties in mediation session regarding an earlier Supreme Court of NSW costs order.

22 As to the reasons for asking for these orders, it was stated in the application:

> Confirmation of failed mediation attached.
>
> Agreed terms and conditions of settlement of the parties, set out in letters dated 27 February 2020 and 5 March 2020, attached.
>
> The Supreme Court ordered the Applicant in those failed proceedings pay costs. I, (the applicant in these proceedings) was the Respondent in the Supreme Court proceedings.

23 Section 230 of the SSMA empowers the Tribunal to make orders to give effect to any agreement or arrangement arising out of a mediation session.

24 Subsequently, the appellant changed his claim to one under s 232 of the SSMA. In a statement from him, dated 1 November 2022, as to the orders he sought he stated:

> 1. The Applicant is seeking orders, pursuant to the provisions of Section 232 of the Strata Schemes Management Act 2015, requiring the Respondent:
>
> a) Comply with the costs order of the NSW Supreme Court….
>
> b) Comply with the terms of settlement agreed between the parties set out in correspondence between the parties 'legal representatives dated 27 February 2020 and 05 March 2020.
>
> Attached and marked "Annexure 2" is a letter dated 27 February 2020 from Seniors Rights Service address to Taitz Solicitors.
>
> Attached and marked "Annexure 3" is a letter dated 05 March 2020 from Taitz Solicitors addressed to Seniors Rights Service.

25 On 16 January 2023, the appellant wrote to the Tribunal stating that he withdrew his application and stated that "due to pressing domestic circumstances I am unable to pursue the matter further at this time…" As a consequence, the Tribunal dismissed the proceedings. The respondent then applied for costs, which led to the decision the subject of this appeal.

The Tribunal's decision

26 As to the decision under s 50 of the NCAT Act to dispense with the hearing concerning costs, the Tribunal addressed this issue in some detail. It referred to the appellant's position in relation to a hearing, namely that if the Tribunal rejected specified submissions, then the appellant sought a hearing, including to give the Tribunal an opportunity to review relevant documents relating to his withdrawal of the proceedings not yet to hand-this was said to concern medical records relating to a close family member hospitalised with terminal disease. The appellant had submitted that these documents would be important in "debunking" the respondent's assertions that the appellant in withdrawing his proceedings was "capitulating".

27 The Tribunal referred to the respondent's submission that a hearing should be dispensed with. It pointed out that the decision on costs was not based upon the appellant "capitulating". It referred to Appeal Panel authority that costs' decisions in the Consumer and Commercial Division and on appeal were routinely considered "on the papers" and concluded, applying the test in s 50,

that it was entirely satisfied that the issue of costs could be adequately determined in the absence of the parties by considering their written submissions. It also added that it considered that dispensing with a hearing would be consistent with the guiding principle in s 36 of the NCAT Act.

28 As to the decision to award costs to the respondent, the Tribunal addressed the requirement in s 60 of the CAT Act for it to be satisfied that there are "special circumstances warranting an award of costs" in order to enliven a discretion to award such costs.

29 It rejected submissions by the respondent that the appellant had "jumped around" in its case, presented a "moving feast", that the appellant had concluded that his application was "doomed to fail" and that the appellant had conducted the proceedings in a way that unnecessarily disadvantaged the respondent or failed to comply with the duty in s 36 (3) of the CAT Act.

30 However, it concluded that the appellant's proceedings were misconceived and lacked substance-a factor concerning "special circumstances" set out in s 60 (3) (e). It found that it had no jurisdiction to deal with the claim that the respondent be ordered to comply with the Supreme Court costs order. As to the claim concerning the alleged agreement, it found that s 232 (1) (d) (concerning a dispute about an agreement between the owners corporation and the owner of a lot) was sufficiently broad to encompass the relief sought by the appellant, but it concluded that there was no agreed terms of settlement between the parties for a levy excluding the appellant to be struck, as contended by the appellant. It found that the relevant letters did not give rise to such an agreement. It went on to say that it accepted particular submissions, which it set out, from the respondent about the claim concerning the alleged agreement.

The Notice of Appeal

31 The appeal was commenced on 30 May 2023 and was, therefore, filed in time.

32 In the Notice of Appeal, the orders challenged were said to be, first, the order dispensing with a hearing and, secondly, the order requiring the appellant to pay the respondents costs.

33 In the Notice of Appeal (page 2), the appellant provided the following summarised grounds of appeal:

> 1. Applicant significantly disadvantaged in drafting "paper" submissions. Respondent was legally represented over objection.
>
> 2. Tribunal wrong in law and in fact by equating payment of applicants' legal representatives with full and final compliance with the agreement between the parties to strike s. 90 levy…

34 In the Notice of Appeal, the appellant sought leave to appeal and, relevantly, completed sections of the Notice concerning why it was said the decision was not fair and equitable and was against the weight of the evidence (the section concerning significant new evidence was also completed but it appears from what was said that the appellant did not seek to rely on any such new evidence).

35 From the Notice of Appeal and the appellant's written submissions (both in chief and in rebuttal), we discern the following grounds of appeal in support of the challenge to the costs order (as distinct from the order to dispense with a hearing):

(1) The Tribunal erred in concluding that it had no jurisdiction to enforce anything to do with the costs order (Ground 1).

(2) The Tribunal wrongly conflated payment of the appellant's legal representatives in connection with the Supreme Court costs order with full and final compliance with that costs order (Ground 2).

(3) The Tribunal erred in finding that, by the exchange of letters we have referred to, there was no agreement to strike a levy excluding the appellant and that the 5 March 2020 letter was not guaranteeing such a result, but rather that a motion for the levy would be proposed to a general meeting (Ground 3).

(4) The Tribunal was wrong to agree with the particular respondent's submissions that it had set out in the reasons, including that the exchange of letters of 27 February 2020 and 5 March 2020 were no more than opening correspondence between the parties to commence a negotiation as to an agreed sum of costs (Ground 4).

(5) The costs order was unfair and against the public interest (Ground 5).

Reply to Appeal

36 In its Reply to Appeal filed on 26 June 2023 the respondent supports in full the costs orders made on 4 May 2023.

Consideration-order to dispense with a hearing

37 Section 50 of the CAT Act, relevantly, provides:

> (2) The Tribunal may make an order dispensing with a hearing if it is satisfied that the issues for determination can be adequately determined in the absence of the parties by considering any written submissions or any other documents or material lodged with or provided to the Tribunal.
>
> (3) the Tribunal may not make an order dispensing with a hearing unless the Tribunal has first:
>
> (a) afforded the parties an opportunity to make submissions about the proposed order, and
>
> (b) taken any submissions into account.
>
> (4) The Tribunal may determine proceedings in which a hearing is not required based on the written submissions or any other documents or material that have been lodged with or provided to the Tribunal in accordance with the requirements of this Act, enabling legislation and the procedural rules.

38 The decision was a discretionary decision on a question of practice and procedure. With respect to such a decision, the appellant needed to overcome the constraints concerning appellant intervention outlined below when dealing with the challenge to the costs' decision.

39 Section 50 contained specific restrictions relating to the exercise of the discretion but, clearly, those were met in this case (opportunity to make submissions, taking account of submissions, and being satisfied that the issue for determination could be adequately determined in the absence of the parties by considering their written submissions).

40 Prior to the determination of the costs' application, the parties were issued with the following directions of the Tribunal:

> 1. The Tribunal will provide a copy of the respondent's submissions to the applicant by 27 March 2023.
>
> 2. The applicant shall provide submissions in response to the respondent and the Tribunal by 10 April 2023.
>
> 3. The respondent shall provide submissions in reply if any to the Tribunal at the applicant by 17 April 2023.
>
> 4. The submissions must address whether a hearing on the question of costs can be dispensed with.
>
> 5. The Tribunal will then consider the submissions and inform the parties if a hearing on the question of costs is required or whether the hearing can be dispensed with and the decision on costs will be published in due course.

41 It is clear from the reasons for decision that the parties' submissions about dispensing with a hearing were taken into account and, as we have already indicated, the Tribunal found the required satisfaction concerning being able to adequately determine the issue in the absence of the parties.

42 On appeal, the appellant contended that he was significantly disadvantaged by the absence of a hearing, but he did not explain why this was the case and his written and oral submissions did not expand upon this assertion. It is clear from the Tribunal's reasons that the appellant's argument for a hearing, based upon showing that there was no capitulation, was irrelevant to the outcome of the costs' application.

43 Most pertinently, the appellant has not identified any error of law or any material fact that the Tribunal was said to have mistaken in relation to the exercise of the discretion. Nor do we consider that the decision to dispense with the hearing was attended by sufficient doubt so as to warrant the grant of leave to appeal.

44 Accordingly, we refuse leave to appeal in respect of the order made to dispense with a hearing.

Consideration-the costs order

45 In relation to the costs order, as we have already said, the appellant may appeal as of right on a question of law and otherwise requires leave to appeal.

46 As to leave to appeal, cl 12 of Sch 4 is applicable. This provides:

> **12 Limitations on internal appeals against Division decisions**
>
> (1) An Appeal Panel may grant leave under section 80(2)(b) of this Act for an internal appeal against a Division decision only if the Appeal Panel is satisfied the appellant may have suffered a substantial miscarriage of justice because—
>
> (a) the decision of the Tribunal under appeal was not fair and equitable, or
>
> (b) the decision of the Tribunal under appeal was against the weight of evidence, or
>
> (c) significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).

47 There is a further hurdle to overcome in relation to the granting of leave to appeal. In *Collins v Urban* [2014] NSWCATAP 17 at [83]-[84] it was held that

the general principles to apply to an application for leave to appeal are that ordinarily it is appropriate to grant leave to appeal only in matters that involve:

(1) issues of principle;

(2) questions of public importance or matters of administration or policy which might have general application;

(3) an injustice which is reasonably clear, in the sense of going beyond merely what is arguable, or an error that is plain and readily apparent which is central to the Tribunal's decision and not merely peripheral, so that it would be unjust to allow the finding to stand;

(4) a factual error that was unreasonably arrived at and clearly mistaken; or the Tribunal having gone about the fact- finding process in such an unorthodox manner or in such a way that it was likely to produce an unfair result so that it would be in the interests of justice for it to be reviewed.

48 Furthermore, costs decisions fall into the category of discretionary decisions and therefore the appellant must establish an error of the type described in *House v The King* (1936) 55 CLR 499; [1936] HCA 40, namely that the Tribunal: made an error of legal principle; made a material error of fact; took into account some irrelevant matter; failed to take into account, or gave insufficient weight to, some relevant matter; or arrived at a result so unreasonable or unjust as to suggest that one of the foregoing categories of error had occurred, even though the error in question did not explicitly appear on the face of the reasoning.

49 In addition, we adopt the “constrained” or “deferential” standard of appellate review that we regard as applicable, as well as the “particular caution” to be exercised in reviewing a decision concerning a question of practice and procedure (see *McInnes v Rheem Australia Pty Limited* [2021] NSWCA 89 at [21] – [25]; *Roberts v The Owners – Strata Plan No 4393* [2023] NSWCATAP 119 at [54] – [56]). In such circumstances, it is relevant to emphasise that it is not enough that an Appeal Panel might conclude that it would have exercised the discretion to award costs differently if the discretion had been conferred on it in the first instance.

50 We do not consider that the grounds of appeal of the costs order (see paragraph 35 above) truly raised any question of law.

51 First, as to the Tribunal's conclusion that it had no jurisdiction to deal with the order sought from the Tribunal requiring the respondent to comply with the costs order made by the Supreme Court (Ground 1), the Tribunal was, clearly, correct. The Tribunal has no role in the enforcement of orders made by the Supreme Court.

52 Furthermore, the order itself had already been complied with, despite the appellant's incorrect position that it had not been complied because payment had occurred in circumstances where he had not been excluded from bearing any part of the financial burden for the payment (Ground 2). However, it was the point of lack of jurisdiction that the Tribunal acted upon.

53 As to being excluded from any part of the financial burden for the payment, this was the subject of the appellant's particular claim for enforcement of an alleged agreement for the levy to be struck, which excluded the appellant.

54 However, this claim turned upon a construction by the Tribunal of the letters of 27 February 2020 and 5 March 2020 that, in our opinion, was, clearly, correct (Ground 3). There was no promise by the respondent to raise the levy excluding the appellant-it was in no position to make such a promise, as ought to have been evident to the appellant. The promise it made was to put a resolution to a relevant meeting of lot holders. The appellant says that this never occurred, but his claim in the proceedings was not for an order that a resolution be put to such a meeting. Furthermore, if the appellant wanted to pursue such a claim, he should have done so in his 2020 proceedings in the Tribunal.

55 Even if we are wrong, and the appeal raised questions of law in connection with these grounds of appeal, the Tribunal did not err in its conclusions about these matters.

56 Having rejected the claims for an order that the Supreme Court costs order be complied with and the appellant's contention that an agreement had been reached for a s 90 levy to be struck, the Tribunal did go on to say, in a general way, (in paragraph 52 of the reasons) that it accepted particular submissions of the respondent, which it set out in paragraph 51 of the reasons.

57 Most of the submissions that the Tribunal set out concerned the appellant's claim under s 230 of the SSMA seeking to enforce an agreement allegedly reached in mediation. Plainly, the Tribunal was correct to accept such submissions-no such agreement in mediation had ever been reached.

58 The Tribunal's acceptance of these submissions also encompassed a short submission about the appellant's claim to enforce an alleged agreement resulting from the letters of 27 February 2020 and 5 March 2020. Part of this submission included the contention that these letters were opening correspondence, only, to commence a negotiation as to agreement some of costs. On appeal, the appellant criticised this characterisation of the agreement in the respondent's submissions (Ground 4).

59 We consider that the appellant was correct about this, because the final part of the letter of 5 March 2020 concerning the amount of costs to be paid was dealing with that question quite separately from the question of a s 90 levy to be raised.

60 However, to the extent that the Tribunal's general acceptance of the submissions set out in paragraph 51 of the reasons encompassed this particular characterisation of the agreement, it is immaterial to the outcome because, as we already said, the Tribunal was correct in its conclusion that the letters did not amount to an agreement that the s 90 levy would be struck.

61 Finally, as to Ground 5, before the Tribunal at first instance the appellant made a submission that his proceedings brought in August 2022 may have been unnecessary had the respondent not declined to participate in mediation.

62 The Tribunal accepted submissions from the respondent that there was no requirement for it to participate in mediation, it was well within its rights not to do so and it was a matter of conjecture whether mediation might have been successful (paragraphs [33]-[37] of the reasons).

63 In his written submissions on appeal, the appellant contended that the Appeal Panel may find that it is not in the public interest to allow the costs order to stand, given the respondent's deliberate decision to eschew mediation supervised by Fair Trading.

64 In a typed "substitution" Notice of Appeal, the appellant went further and submitted:

> The Tribunal's costs order is unfair in all the circumstances and cannot be in the public interest, including on grounds the applicant is a self- representing aged pensioner; the respondent being legally represented over the objection of the applicant; the relatively insignificant financial stake at the heart of the substantive dispute; the respondent's decision to decline participation in mediation is antithesis to the universally encouraged management and resolution of such relatively minor strata living disputes

65 We should mention here that the respondent was given leave to be legally represented in the proceedings.

66 We see no error of law or principle by the Tribunal or any other error of a *House v King* kind in connection with this ground of appeal, nor do we consider that, overall, the Tribunal was more than arguably wrong in exercising its discretion to award costs to the respondent.

Costs of the appeal

67 The respondent seeks the costs of the appeal. Costs submissions were provided by the respondent in written submissions [59] to [75]. The main contentions are that the appellant has failed to address the Tribunal's findings and that he merely restated the issues he raised at first instance; the proceedings were legally and factually complex and have a lengthy history; and there were no compelling submissions advanced to the appellant's application.

68 The respondent submits that the appeal was misconceived and lacking in substance, satisfying the criteria in s 60 (3) (e) of the CAT Act and that the criteria in s 60 (3) (a), (b), (c), (d) and (f) were also satisfied.

69 No amount claimed or in dispute in the appeal proceedings was identified, and the respondent accepted that special circumstances needed to be established. For the reasons that follow, we consider there is nothing out of the ordinary in this appeal and that each party should pay their own costs of this appeal.

70 We are not satisfied that any of the relevant criteria in s 60(3) relied upon are established that warrants a costs order being made in the appeal.

71 We find that the appellant did not unreasonably seek appellate review of the Tribunal's decision in circumstances where the owners corporation wrote to the

appellant undertaking to table a motion and stating “the result of which will be Mr Veney will not be levied for the owners corporation’s costs”. It was not entirely misconceived for the appellant, who was unrepresented when he commenced proceedings on 25 August 2022, to mistake the correspondence for a binding agreement. The Tribunal, correctly, arrived at a finding that the letter could have “been more happily drafted” but did not amount to an agreement that a future levy would exclude the appellant.

72 Furthermore, as we have already mentioned, the correspondence concerning the levy was not just opening correspondence for a negotiation about the costs to be paid.

73 Accordingly, we are not satisfied that the appeal was misconceived or lacking in substance.

74 There is nothing in the appellant’s conduct of the appeal which suggests that it was conducted in a manner that would constitute special circumstances. We are not satisfied that the appellant was responsible for unreasonably prolonging the time taken to complete the proceedings.

75 The fact that the respondent elected to be represented and has incurred costs of litigation in itself does not constitute a special circumstance even though there was nothing particularly complex about the appeal, which caused the respondent to retain legal representation (see *ZHH v ZHI (No 2)* [2018] NSWCATAP 193 at [5]).

76 We consider that there are no special circumstances meriting an award of costs under s 60. This means that each party is to pay their own costs of the appeal.

Orders

(1) Leaved to appeal refused.

(2) Appeal dismissed.

(3) No order as to costs with the intention that each party pay its own costs.

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I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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