## SUMMONS (SUPERVISORY JURISDICTION)

**COURT DETAILS** 

Court Supreme Court of New South Wales, Court of Appeal

Registry Sydney

Case number

TITLE OF PROCEEDINGS

Applicant Walker Group Constructions Pty Limited

ACN 097 303 716

First Respondent Tzaneros Investments Pty Ltd

ACN 114 879 524

Second Respondent District Court of NSW

PROCEEDINGS IN THE COURT BELOW

Title below Walker Group Constructions Pty Ltd v Tzaneros

Investments Pty Ltd

Court below District Court of NSW

Case number below 2022/153457

Dates of hearing 17 and 18 November 2022

Material date 6 March 2023
Decision of Curtis ADCJ

FILING DETAILS

Filed for Walker Group Constructions Pty Limited, Applicant

Filed in relation to The whole decision below

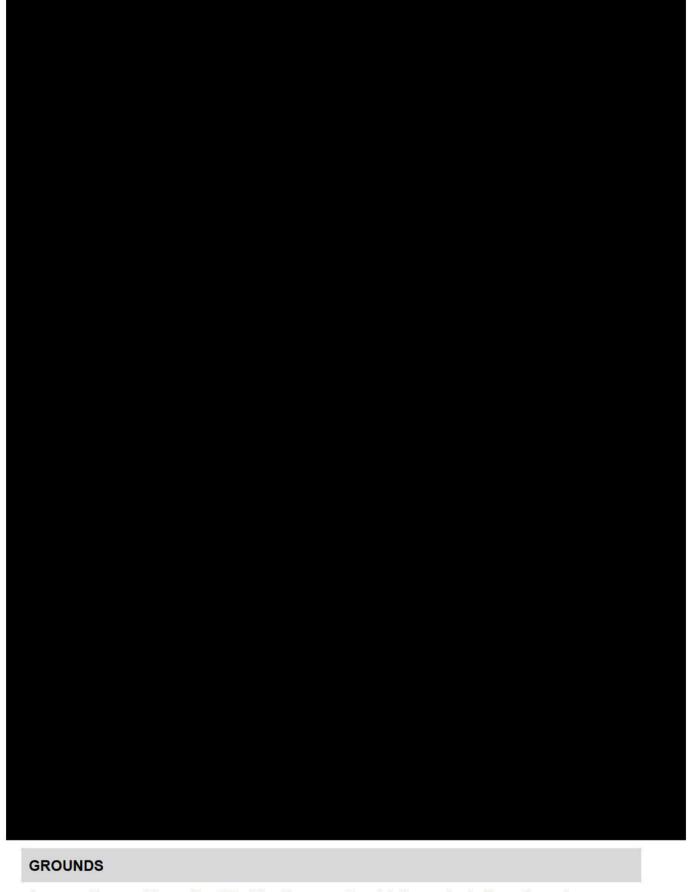
Legal representative Douglas James Bishop, Clayton Utz

## **HEARING DETAILS**

This summons is listed at

## TYPE OF CLAIM

Judicial Review



Pursuant to section 69 of the Supreme Court Act an order in the nature of mandamus is sought compelling the District Court to exercise jurisdiction to decide the questions stated above at paragraph 1 of the "Orders sought".

- In the proceedings below the District Court was exercising power under s.384 of the Legal Profession Act 2004. Under that section a party "who is dissatisfied with a decision of a costs assessor as to a matter of law arising in the proceedings to determine the application" has a right of appeal.
- The reference to "costs assessor" includes reference to a review panel: s.382(1).
- The District Court is required to decide "the question the subject of the appeal".

  The phrase "the question" includes the plural (section 8(b), Interpretation Act 1987), and so applies to "the questions" the subject of the appeal.
- 5 Following deciding the questions the subject of the appeal (ie, "after", s.384(2), chapeau) the Court is required either to:
  - a. affirm the costs assessor's decision, or
  - make such determination as should have been made by the costs assessor, or
  - remit its decision "on the question" to the costs assessor and order the costs assessor to re-determine the application.
- The Court is not required only to determine such grounds of appeal as may appear to it to be dispositive of the decision as to whether the matter should be remitted to the panel, or in which it finds error.
- Fach ground which raises a "matter of law arising in the proceedings to determine the application" is required to be the subject of decision and then action (affirm, determine or remit); that is the scope and nature of the jurisdiction given by s.384.
- The District Court failed to exercise jurisdiction as required and it is submitted that there is no reason why an order in the nature of mandamus would not lie.