

## SUMMONS (SUPERVISORY JURISDICTION)

### COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	

### TITLE OF PROCEEDINGS

Applicant	<b>Walker Group Constructions Pty Limited</b> <b>ACN 097 303 716</b>
First Respondent	<b>Tzaneros Investments Pty Ltd</b> <b>ACN 114 879 524</b>
Second Respondent	<b>District Court of NSW</b>

### 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	<b>Walker Group Constructions Pty Limited, Applicant</b>
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

## GROUND S

- 1 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".

- 2 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.
  - 3 The reference to “costs assessor” includes reference to a review panel: s.382(1).
  - 4 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
    - b. make such determination as should have been made by the costs assessor, or
    - c. remit its decision “on the question” to the costs assessor and order the costs assessor to re-determine the application.
  - 6 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.
  - 7 Each 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.
  - 8 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.
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