

SUMMONS (JUDICIAL REVIEW)

COURT DETAILS

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

TITLE OF PROCEEDINGS

Appellant	CARNAVALESCA PTY LTD trading as PARAGALLI HAULAGE
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Respondents	RODERICK CHARLES JENKINS AND JULIE DALEY JENKINS
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PROCEEDINGS BEING REVIEWED

Title	Carnavalesca Pty Ltd t/a Paragalli Haulage v Roderick Charles Jenkins and Julie Daley Jenkins
Court	District Court of New South Wales
Case number	2022/00317705
Date of hearing	3 April 2023
Material date	17 May 2023
Decision of	Dicker SC DCJ

FILING DETAILS

Filed for	Carnavalesca Pty Ltd t/a Paragalli Haulage, Appellant
Filed in relation to	Plaintiff's appeal
Legal representative	Samuel Alexander Tierney, Ken Cush & Associates
Legal representative reference	SAT:994574
Contact name and telephone	Samuel Tierney, [REDACTED]
Contact email	[REDACTED]

HEARING DETAILS

This summons is listed at

TYPE OF CLAIM

Common law – Appeal

ORDERS SOUGHT

- 1 The decision of the District Court made on 17 May 2023 dismissing the appeal is quashed.
- 2 In lieu thereof it is ordered that the appellant is to pay the respondent the sum of \$729.60, and interest thereon.
- 3 The respondent is to pay the appellant's costs of this appeal and of the District Court proceedings.
- 4 Any further orders which this Honourable Court considers necessary.

DETAILS OF DECISION

- 1 The decision maker was Dicker SC DCJ.
- 2 The decision to be reviewed is the decision of the District Court made on 17 May 2023 as follows:
 - (1) The Notice of Motion filed on 9 November 2022 is dismissed with no order as to costs.
 - (2) The Appeal is dismissed.
 - (3) The plaintiff is to pay the costs of the defendants of the Appeal as agreed or assessed.
- 3 The plaintiff seeks relief from the whole of the decision.

FOUNDATIONS

- 1 His Honour erred in law in holding (at Reasons [72]) that the use of the word "relevant" in s. 75 of the *Legal Profession Uniform Law Application Act* 2014 limits the relevant regulations and rules which must be taken into account in an assessment so as not to take into account rules relating to the powers of a Court when, on its proper construction in the circumstances of the case, s. 75 required the assessment of the costs payable under the order of the Magistrate to be made in accordance with the rules made, for the purposes of s. 37 *Local Court Act* 2007, under s. 26 of that Act including r. 2.9(3)(a) of the *Local Court Rules* which limited the costs payable on the discontinuance of the action to the sum of \$729.60.

SIGNATURE OF LEGAL REPRESENTATIVE

This summons does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

I have advised the plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

A black rectangular box redacting the signature of Samuel Tierney.

Capacity

Samuel Tierney, Solicitor

Date of signature

14 June 2023

NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

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FURTHER DETAILS ABOUT PLAINTIFF

Appellant

Name **CARNAVALESCA PTY LTD**
trading as **PARAGALLI HAULAGE**

Address

[REDACTED]
[REDACTED]

Legal representative for appellant

Name Samuel Alexander Tierney

Practising certificate number

[REDACTED]

Firm

Ken Cush & Associates

Address

Level 1, ARTE Building
10-12 Lonsdale St
Braddon ACT 2612

Telephone

Fax

Email

Electronic service address

[REDACTED]

DETAILS ABOUT DEFENDANT

Respondent

Name Roderick Charles Jenkins and Julie Daley Jenkins

Address

[REDACTED]

Respondent's Legal Representative:

Name: Minuri Yasara Dharmasena

Address

Aulich Civil Law
Ground floor, 1 Farrell Place
Canberra City ACT 2601

Email

Telephone

[REDACTED]