



HIGH COURT OF AUSTRALIA

29 September 2010

KOSTAS & ANOR v HIA INSURANCE SERVICES LIMITED T/AS HOME OWNERS WARRANTY & ANOR

[2010] HCA 32

In August 1999, the appellants engaged a builder to undertake substantial renovations to their home. By June 2000, disputes had arisen and the appellants purported to terminate the building contract. They made a claim with HIA Insurance Services Limited ("HIA"), the statutory insurer of the builder's work. Upon HIA rejecting the claim, the appellants commenced proceedings in September 2000 against HIA and the builder in the Consumer, Trader and Tenancy Tribunal of New South Wales.

In a decision handed down in May 2005, the Tribunal held that the appellants had not validly terminated the contract. Central to this decision was a finding that the builder had served two claims for extensions of time in accordance with the contract and that the appellants had not disputed those claims in the manner required by the contract.

The appellants appealed against the Tribunal's decision to the Supreme Court of New South Wales under s 67 of the *Consumer, Trader and Tenancy Tribunal Act 2001* (NSW). At the relevant time, that section provided for a right of appeal to the Supreme Court against a decision by the Tribunal of "a question with respect to a matter of law". The appellants contended that there was no evidence properly before the Tribunal that supported its finding that the builder had served time-extension claims in accordance with the contract. They contended that, as a result, the Tribunal had made an erroneous decision of a question with respect to a matter of law. The Supreme Court agreed, finding that the termination of the contract was lawful and effective and quashing the Tribunal's decision.

HIA successfully appealed to the Court of Appeal on the basis that there was no "question with respect to a matter of law" to attract the Supreme Court's jurisdiction. The Court of Appeal held that a contention that there was no evidence to support a factual finding of the Tribunal could not form the basis of a statutory appeal under s 67 of the *Consumer, Trader and Tenancy Tribunal Act*. The appellants were granted special leave to appeal to the High Court against the Court of Appeal's decision.

Today, the High Court allowed the appeal and restored the decision of the Supreme Court. The Court held that the question whether there was no evidence to support a factual finding of the Tribunal was a question with respect to a matter of law. The factual finding in this case was that the builder had served the relevant time-extension claims. The Court held that there was no evidence before the Tribunal upon which it could make this finding. The jurisdiction of the Supreme Court under s 67 was properly invoked and the decision of the judge at first instance on this point was correct.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*