

COURT OF APPEAL

WILLIAMS JA

Appeal No 2694 of 2006

KNJ PTY LTD
(ACN 082 047 952)

Applicant/Respondent)

v.

DARE SUTTON CLARKE PTY LTD
(ACN 008 026 940)

Respondent/Applicant)

BRISBANE

..DATE 11/04/2006

JUDGMENT

MS R M KELLY (instructed by MacDonnells) for the applicant

MR P D HAY (instructed by Bennett & Philp Solicitors) for the respondent

WILLIAMS JA: This is an application pursuant to rule 765 of the Uniform Civil Procedure Rules for a stay of execution of a judgment of the District Court made on the 10th of March 2006. The judgment was pursuant to section 19 of the Building and Construction Industry Payments Act 2004 for the sum of \$54,638.93. The present applicant appeared before the District Court Judge by counsel who was instructed by the client's solicitor. Counsel for the applicant conducted the case raising a particular defence which was unsuccessful.

Present counsel for the applicant frankly conceded on the hearing of this application that all the grounds of appeal were not argued at first instance. Indeed, it seems that all the matters the subject of the grounds of appeal were the subject of admissions made by counsel for the applicant at first instance. Those admissions were made in the presence of the instructing solicitor. In those circumstances, on the hearing of the appeal the applicant seeks to place evidence before the Court challenging the basis on which those admissions were made.

Against that background I am not satisfied that the applicant has discharged the onus of showing that this is an appropriate case in which to grant a stay of the judgment. For those reasons the application is dismissed with costs.
