

SUPREME COURT OF QUEENSLAND

CITATION: *Repine v Antech Constructions Pty Ltd* [2026] QCA 177

PARTIES: **NIKOLAI NIKOLAEVICH REPINE**
(applicant/appellant)
v
ANTECH CONSTRUCTIONS PTY LTD
(respondent)

FILE NO/S: Appeal No 1633 of 2026
Appeal No 1635 of 2026
SC No 498 of 2026

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time
General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – Date of Order: 26 February 2026 (Cooper J); Date of Order: 8 April 2026 (Ryan J)

DELIVERED ON: 18 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 8 September 2026

JUDGES: Mullins P, Bond JA, Boddice JA

ORDERS: **In Appeal No 1633 of 2026:**

- 1. Application for leave to rely on the applicant's affidavits affirmed on 13 and 20 July 2026 refused.**
- 2. Application for extension of time to apply for leave to appeal against the order of Cooper J made on 26 February 2026 refused with costs.**

In Appeal No 1635 of 2026:

- 1. Application for leave to rely on the appellant's affidavits filed on 13 and 20 July 2026 refused.**
- 2. Appeal against the orders made by Ryan J on 8 April 2026 dismissed with costs.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PARTIES AND REPRESENTATION – PROPER OR NECESSARY PARTY AND STANDING – where the appellant filed an application for review and a statutory order of review under s 20, s 21, s 22 and s 43 of the *Judicial Review Act 1991* (Qld) in the Trial Division (**first application**) – where the appellant named the respondent as the third respondent to the application despite acknowledging that no relief was sought and no allegations

were made against the respondent – where the applications judge summarily dismissed the proceeding against the respondent because the respondent could not have made a decision of an administrative character to which the *Judicial Review Act 1991* (Qld) applied– where there was no error by the applications judge in summarily dismissing the application – where there was no substantial injustice to the appellant – where it was not in the interests of justice to grant an extension of time in which to appeal

PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – INHERENT AND GENERAL STATUTORY POWERS – TO STAY OR DISMISS ORDERS OR PROCEEDINGS GENERALLY – where the appellant brought a second application before a different judge under r 667(2)(d) of the *Uniform Civil Procedure Rules 1999* (Qld) seeking an order to set aside or vary the order summarily dismissing the first application (**second application**) – where the judge hearing the second application declined to entertain the second application and summarily dismissed it because the second application was essentially in the nature of an appeal from the first application – where there was no denial of natural justice in summarily dismissing the second application – where there was no substantial injustice to the appellant resulting from the dismissal of the second application

Judicial Review Act 1991 (Qld), s 43

Uniform Civil Procedure Rules 1999 (Qld), r 667

Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc (1981) 148 CLR 170; [1981] HCA 39, cited
R v Tait [1999] 2 Qd R 667; [\[1998\] QCA 304](#), cited

COUNSEL: The appellant appeared on his own behalf
 C H Matthews for the respondent

SOLICITORS: The appellant appeared on his own behalf
 McCarthy Durie Lawyers for the respondent

- [1] **THE COURT:** On 5 February 2026, Mr Repine filed an application for review and for a statutory order of review (the review application) pursuant to s 20, s 21, s 22 and s 43 of the *Judicial Review Act 1991* (Qld) (Act) in the Trial Division, naming the Queensland Building and Construction Commission (QBCC) as the first respondent, the Queensland Civil and Administrative Tribunal (QCAT) as the second respondent, and the respondent as the third respondent. The first paragraph of the review application recited that it was brought pursuant to s 20, s 21, s 22 and s 43 of the Act “as applicable, and, to the extent that statutory relief is unavailable or inadequate, in the exercise of the Court’s inherent jurisdiction”. The asserted reliance on the Court’s inherent jurisdiction did not alter the nature of the application that was filed as one that was seeking relief pursuant to the specified provisions of the Act.
- [2] The review application was listed for directions on 26 February 2026 before Cooper J. At that hearing, the respondent filed an outline in which it sought an order that the

proceeding against the respondent be dismissed on the ground that there was no decision of an administrative character to which the Act applies made by the respondent to enliven any right to relief against it and no relief was sought by Mr Repine against the respondent in the review application. Mr Repine acknowledged in his written and oral submissions before Cooper J that there was no relief sought against the respondent and that the review application itself had stated that no allegations were made against the respondent but explained that he had joined the respondent because it was a party to the original proceedings in the QBCC and therefore appeared to have some interest in the outcome of the review application. Mr Repine was prepared to consent to the respondent being removed as a party but would oppose an application to dismiss his proceeding against the respondent.

- [3] Cooper J was satisfied that the proceeding should be dismissed because there can be no claim against the respondent under the Act for review of any decision or any conduct in connection with a decision made by the respondent which falls within the scope of the Act. As the respondent's outline was only provided to Mr Repine the day before the directions hearing, Cooper J ordered that there be no order as to costs in respect of the proceeding against the respondent.

- [4] On 27 March 2026, Mr Repine filed an application seeking an order, pursuant to r 667(2)(d) of the *Uniform Civil Procedure Rules 1999* (Qld) (*UCPR*), that the order made by Cooper J on 26 February 2026 be set aside or, alternatively, varied and, in lieu, sought an order that the respondent's application to dismiss the proceeding be dismissed on the ground that, because no claim for relief was sought against the respondent, there was therefore nothing capable of being dismissed. The application also sought that the proceeding continue under r 67 or, alternatively, that the respondent be removed from the proceeding under r 69(1)(a) as a party unnecessarily joined.

- [5] The application under r 667(2)(d) was heard by Ryan J on 8 April 2026 and was dismissed with costs. Ryan J considered that the application under r 667(2)(d) was "essentially in the nature of an appeal" against Cooper J's decision for which her Honour did not have jurisdiction and also considered it was an inappropriate matter to be dealt with under the slip rule for reasons that included that Mr Repine's submissions focused on Cooper J's intention which Ryan J considered was not something that could be determined by her Honour.

- [6] Appeal No 1633 of 2026 is Mr Repine's application filed on 17 April 2026 seeking an extension of time pursuant to r 748 of the *UCPR* for bringing the proposed appeal against Cooper J's order and that leave be granted, if required, under s 48(5) of the Act to bring the proposed appeal. The grounds in the proposed notice of appeal are that:
 - (1) it was an error to dismiss the proceeding against the respondent where no allegation was made, and no relief was sought, against the respondent, such that there was nothing before the Court capable of dismissal as against that party;
 - (2) failing to take into account that the respondent was properly joined in the proceeding where it was a party to the QBCC decisions under review, a party to the extant proceeding before the QBCC under review, and was seeking to be joined to the extant QCAT proceedings under review, such that there was an arguable possibility that it might be affected by the relief or orders sought;

- (3) failing to take into account that, if the Court's intention was to exclude the respondent from further participation in the proceeding, the appropriate order was one under r 67 or r 69(1)(a) of the *UCPR*, rather than an order dismissing the proceeding as against the respondent.
- [7] In Appeal No 1635 of 2026, also filed on 17 April 2026, Mr Repine appeals against Ryan J's orders on the grounds of denial of natural justice, failing to apply the proper test applicable to Mr Repine's case and failing to refer the application to a judge (Cooper J) who had jurisdiction to hear it.
- [8] The threshold question in Appeal No 1633 of 2026 is whether the respondent had been made a party to the review application.
- [9] The review application is an extensive and wide-ranging application that contained 115 paragraphs when the proceeding commenced. The three named respondents are listed in the heading as parties with their respective designations as a respondent. In the usual form, the review application concludes with a notice addressed "To The Respondent", advising of the directions hearing and that if there is no attendance before the Court by the respondent, the application may be dealt with and any judgment may be given or an order made in the respondent's absence. The three named respondents are listed as the parties on whom the application was to be served. Despite the applicant not seeking any direct relief against the respondent, Mr Repine elected to join and serve the respondent as a party. The form of the review application and its service on the respondent was sufficient to join the respondent as a party to the review application.
- [10] For the purpose of both appeals, Mr Repine relies on his affidavit filed on 13 July 2026 in relation to QBCC's decisions made on 30 April 2026 and 21 May 2026 in respect of his building defects complaint and the decision made by QCAT on 23 April 2026 to join the respondent as an affected party in proceedings GAR 465-25 and GAR 622-25. QBCC's conduct and decisions in those QCAT proceedings are the subject of the review application. Mr Repine also seeks to rely on his affidavit affirmed on 20 July 2026 which exhibits the costs statement served on him on behalf of the respondent in relation to Ryan J's order made on 8 April 2026. Mr Repine draws attention to items in that costs statement on which he relies to make the submission that QBCC and the respondent "acted in procedural alignment". The decision of Cooper J was made on the basis of what was disclosed in the review application. The subsequent events in relation to QBCC's dealing with Mr Repine's building defects complaint against the respondent and the joinder of the respondent in proceedings before QCAT on the respondent's application do not alter the nature of the claims in the review application that are made against QBCC rather than the respondent. The assertions made by Mr Repine from his perusal of the costs statement are speculation but, in any case, do not alter the nature of the claims in the review application which were before Cooper J. Leave to rely on the affidavits filed on 13 and 20 July 2026 should be refused.
- [11] The respondent was represented by counsel and solicitors at the directions hearing on 26 February 2026 and relied on counsel's written submissions dated 25 February 2026. In those submissions, the respondent sought the dismissal of the proceeding against it as no relief was sought in the review application against it and nor could any relief be sought against it under the Act as it was incapable of making any decision to which the Act applies. It submitted that it should not be put to the cost

and expense of remaining in the proceeding where it was not a necessary party. In the alternative, the respondent sought an opportunity to bring an application for dismissal. The respondent had not filed any application for dismissal prior to the directions hearing.

- [12] The Court has power under s 48(3) of the Act to make an order under s 48(1) of the Act either of its own motion or on an application by a party to the proceeding. Cooper J either acted on the informal application by the respondent for the dismissal of the proceeding against it or the Court's own motion in deciding it was appropriate that the proceeding against the respondent be dismissed. Provided the jurisdiction for making an order on an application exists, it is not necessary for the judge to identify the jurisdiction that was being exercised.
- [13] The summary way in which the matter was dealt with before Cooper J on the directions hearing reflected an application of the legislative preference embodied in s 48(2)(b) of the Act that the Court must try to ensure any exercise of the power to dismiss an application "happens at the earliest appropriate time".
- [14] The power that is conferred under s 48(1) of the Act applies only to applications under s 20, s 21, s 22 or s 43 of the Act. Even though, as Mr Repine argues, there may have been an alternative way of dealing with the inappropriate joinder of the respondent to the review application, such as an application to remove the respondent as a party, it was not inappropriate for Cooper J to exercise the power for summary dismissal that is conferred on the Court in respect of applications under the Act.
- [15] Even though the extension of time that Mr Repine seeks for applying for leave to appeal against Cooper J's order is only short, he could point to no substantial injustice to him that resulted from Cooper J's order. As the above analysis shows, he has no prospects of success in obtaining leave to appeal and appealing against Cooper J's order. It is therefore not in the interests of justice to grant the extension: *R v Tait* [1999] 2 Qd R 667 at 668. The application for extension of time to appeal against the order made by Cooper J on 26 February 2026 should be refused with costs.
- [16] The applications jurisdiction exercised by judges sitting in the Trial Division is one where appropriate applications are dealt with in a summary manner, as many applications concern practice and procedure issues. Mr Repine's application under r 667(2)(d) was of that nature. From the outset of the hearing Mr Repine outlined to Ryan J that the order made by Cooper J did not reflect the intention of the Court because there was nothing to dismiss, as no claims were made against the respondent and Mr Repine had joined it only because it was an affected party. It is not surprising after that explanation that Ryan J formed the view that, if Mr Repine had a problem with Cooper J's order, the solution was for him to appeal it. That Ryan J quickly appreciated the difficulty with Mr Repine's application does not mean that there was any denial of natural justice.
- [17] As there was no ambiguity about Cooper J's intention to order the dismissal of the review application against the respondent, Appeal No 1635 of 2026 cannot succeed. Cooper J's order reflected the intention he had expressed in his reasons to accede to the request made by the respondent for an order dismissing the review application against it. It was therefore not a case for the application of r 667(2)(d) to that order. Ryan J was not in error in characterising the application filed on 27 March 2026 as in the nature of an appeal against Cooper J's order. Theoretically, Ryan J did have

jurisdiction to entertain an application under r 667(2)(d) in respect of the order of Cooper J, but there was no error in Ryan J declining to entertain that application which could not have succeeded. As the appeal is from a decision concerning practice and procedure, the appeal could also not succeed for the reason that Ryan J's decision did not result in a substantial injustice to Mr Repine: *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR 170 at 177. Mr Repine's appeal against Ryan J's orders should be dismissed with costs.

[18] The orders which should be made are:

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