

**CITY OF BOROONDARA V NEUMANN SANDS VICTORIA PTY LTD [1999] VSC 39**

Supreme Court of Victoria – 25 February 1999

**FACTS**

The Council entered into a contract with Neumann to dredge sand from a site and then sell the sand.

The Council improperly ended the contract in 1993 and the Arbitrator found that the conduct by the Council had amounted to repudiation of the contract. The Arbitrator awarded damages to Neumann.

Council sought leave to appeal the decision by the Arbitrator.

**ISSUE**

Did the Council's application for leave to appeal the decision of the arbitration disclose any questions of law?

**FINDING**

None of the Council's grounds for leave to appeal indicated that there had been an error of law by the Arbitrator. The Council's real complaint was about the findings of fact by the Arbitrator. The Council's application was dismissed.

**QUOTE**

*"On February 1999 the arbitrator published his second interim award. On 18 February 1999 I gave leave to the principal to amend its notice of motion and summons so as to include in its leave application any complaints which it might have about this further award. This leave was availed of and very fulsomely; the new proposed notice of appeal has now grown from 15 pages to 56 pages. It is not for that improvement on its predecessor, for it still contains no concise statement of the questions of law which are the subject of the application.*

*Indeed, it makes my tasks even more difficult for it contains a snowstorm of grounds of appeal, many of which plainly are not appropriate for an appeal under section 38. This meant that, picking over the mass of material, I run the risk of missing a question of law which, if it exists, might satisfy the requirements of the statute. I cannot too strongly deprecate the form in which this application has been brought. As things turned out, I was told at the end of the day that of the 41 grounds in the proposed notice of appeal, only 10 were pressed. It is to these 10 grounds that I shall direct attention". - paragraph 4 of (1999) VSC 39*

**IMPACT**

If there is to be an appeal against a decision by the Arbitrator, the party wishing to appeal must prove that there have been errors of law by the Arbitrator. Merely being unhappy about the findings of fact of an Arbitrator is not sufficient to justify an appeal.

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