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Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Novelly v Tamqia Pty Ltd (NSWCA) - primary judge had erred in dismissing contempt motion on the basis that it alleged criminal contempt only and that the contempt was not contumacious

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Summaries With Link (Five Minute Read)

Novelly v Tamqia Pty Ltd [2024] NSWCA 167

Court of Appeal of New South Wales

Meagher, Gleeson, & Kirk JJA

Contempt of court - Novelly leased a penthouse apartment from Tamqia - Novelly sought specific performance of Tamqia's obligations, including to keep the premises in reasonable repair, and also sought damages and injunctive relief against the sole director of Tamqia - the primary judge dismissed the claim for specific performance, and Tamqia and its director gave undertakings which were accepted by the Court - Novelly filed statements of charge, charging Tamqia and its director with committing breaches of those undertakings, which included the allegations that the alleged breaches of the undertakings were "contumacious" - the primary judge dismissed this motion, finding that, although the respondents' breaches of the undertakings were a civil contempt, Novelly had not proved that the breaches were contumacious - Novelly appealed - held: although the distinction between civil and criminal contempt has been much criticised, the distinction persists for relevant purposes, including appellate rights - s101(6) of the *Supreme Court Act 1970* (NSW) assumes that there is a difference in relation to appellate rights between civil and criminal contempt - an appeal is available in the case of acquittal (or a related order) of civil contempt, but not in the case of acquittal of criminal contempt - the test is whether the proceedings were remedial or coercive in nature, as distinct from being punitive, and this test focuses on the substantial character of the proceedings, not merely formal or incidental features - the time for application of the test is the time of commencement of the proceedings - the proceedings here were remedial or coercive, not punitive, as they concerned a tenant's attempt to satisfy his legitimate interest in securing his rights under the lease - the appeal was competent - the primary judge erred in finding that contumacy was an element of the offence of criminal contempt - the primary judge had not been constrained by the allegations of contumacy from making a finding that the breaches of the undertakings were a civil contempt - the contempt proceedings had had a "double aspect", in that Novelly had sought a finding of "at least" civil contempt, and had also sought a finding that the relevant breaches were contumacious - the respondents' submission that the contempt proceedings were run on the sole basis that the respondents' conduct was contumacious could not be accepted - appeal allowed.

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