

High Court

Civil procedure

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Milverton International Investment Ltd v Watpat Nominees Ltd 26/8/03, Priestley J, HC Auckland CIV2003404746; M287/IM03

Unsuccessful appeal by MIIL against an arbitral award - WNL was a service company of a law firm which leased premises in MIILs building WNL alleged air conditioning system was not performing satisfactorily and that MIIL was in breach of its obligations as lessor - WNL argued MIIL failed to discharge its obligation to use its best endeavours to provide and maintain air conditioning plant over a stipulated period and breached covenant for quiet enjoyment contained in lease - arbitrator determined MIIL was obliged to do all that a determined person would reasonably do to keep air conditioning plant in such a condition as to enable it to continue to serve its purpose - arbitrator found damages to be 4% of rent WNL were required to pay under lease over relevant period - whether leave should be granted to MIIL under cl 5(1)(c) Arbitration Act 1996 (AA) to appeal arbitral award.

Held, cl 5(1)(c) AA permits a party to appeal to High Court ("HC") on a question of law arising out of an award - under cl 5(2) AA HC will not have discretion to grant leave if rights of one party are not substantially affected - inherent weakness in proposed question of law, limited value of issue beyond interests of parties, modest importance of dispute to parties, arbitrators expertise, and fact arbitrator found there had been a derogation of grant leads Court to decline discretion to grant leave - appeal dismissed.