

COURT OF APPEAL

GOTTERSON JA

**Appeal No 5387 of 2017
QCAT No 403 of 2015**

**TROJAN RESORTS PTY LTD
ACN 155 640 029**

First Respondent/Applicant

v

**EMPROVE HOLDINGS PTY LTD
ACN 130 063 900**

Appellant/First Respondent

BODY CORPORATE FOR THE RESERVE CTS 31561

**Second Respondent/Second
Respondent**

JAMES ANDREW LOVEL

**Not a Party to the Appeal/
Third Respondent**

BRISBANE

THURSDAY, 20 JULY 2017

JUDGMENT

GOTTERSON JA: On 30 May 2017, Emprove Holdings Pty Ltd filed an application in this Court to which Trojan Resorts Pty Ltd is First Respondent and Body Corporate for The Reserve CTS 31561 is Second Respondent. The application seeks leave to appeal against two decisions made in the Queensland Civil and Administrative Tribunal (“QCAT”). One is the decision of a member of QCAT made on 1 September 2015. I shall refer to this decision as the Primary

Decision. The second is a refusal by the Appeal Tribunal of QCAT of an application for leave to appeal to it against the Primary Decision made on 2 May 2017. Leave was required because the proposed appeal involved mixed questions of fact and law. I shall refer to that decision as the Appeal Tribunal Decision. A declaration is also sought that Emprove Holdings has standing to appeal the Primary Decision.

The application before me today is an application by Trojan Resorts which was filed on 21 June 2017. It seeks orders that the application filed by Emprove Holdings be dismissed, struck out, or alternatively, stayed. There is an application in the alternative for security for costs. Mr James Lovel is named as Third Respondent to Trojan Resorts' application.

Mr Lovel is the chairperson of the Body Corporate for The Reserve CTS 31561. It is the body corporate for "The Reserve", a residential develop situated at Varsity Lakes. Emprove Holdings, which is wholly owned by Mr Lovel, is the registered owner of strata titled residential apartments in The Reserve. At the 30 September 2014, Trojan Resorts and the Body Corporate were the parties to Management and Letting Agreements dated 20 August 2003 for The Reserve.

On 30 September 2014, the Body Corporate, at its annual general meeting, resolved to terminate the two agreements. Mr Lovel cast all of Emprove Holdings' three votes in favour of the motion to terminate.

Proceedings were then instituted in QCAT, to which Trojan Resorts and the Body Corporate, and they alone, were parties. The Primary Decision made in those proceedings was that the terminations were invalid and of no effect.

At an extraordinary general meeting held on 31 March 2016, the members of the Body Corporate resolved to appeal to the Appeal Tribunal of QCAT against the Primary Decision. On this occasion too, Mr Lovel cast all of Emprove Holdings' votes in favour of the resolution. Mr

Lovel says that he was disappointed that the Body Corporate's lawyer did not call him as a witness at the first hearing.

It is in these circumstances that Emprove Holdings has filed its application in this Court.

The principal question that arises here is whether Emprove Holdings is, itself, competent to appeal to this Court against the Appeal Tribunal's Decision or, for that matter, the Primary Decision.

Section 150 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ("the Act") regulates appeals to this Court in respect of decisions of the Appeal Tribunal. Subsection (1) thereof provides:

"A person may appeal to the Court of Appeal against a decision of the appeal tribunal to refuse an application for leave to appeal to the appeal tribunal."

Subsection (3)(b) permits an appeal under subsection (1) only if the party has obtained this Court's leave to appeal.

In my view, these provisions permit a person who was an applicant for leave to appeal to the Appeal Tribunal, to apply to this Court against a refusal by the Appeal Tribunal of leave to appeal to it, but only with the leave of this Court. No other person may appeal under s 150(1).

I acknowledge that subsection (1) is introduced by the words, "a person." However, the use of those words is not intended to open the right to appeal under s 150(1) to any person whomsoever. That, I think, is clear from the appeal provisions in s 142 of the Act which permit a party to a proceeding in QCAT to appeal to the Appeal Tribunal against a decision of a single member who is not a judicial member, with leave if necessary. The single member who made the Primary Decision was, I note, not a judicial member. It would be incongruous indeed, that any person whatsoever might appeal to this Court against a refusal of leave to appeal to the Appeal Tribunal when the right to appeal to the Appeal Tribunal is limited to parties to the proceeding in QCAT.

I understand the words, “A person,” to have been used in acknowledgment that if any application for leave to appeal is refused by the Appeal Tribunal, the applicant never becomes a party to an appeal to which s 150(2) applies. In this way, the words chosen maintain a consistency of expression within s 150 and align within the provisions in the Act relating to appeals to the Appeal Tribunal. Specifically, those words do not extend to a person who might venture that it is convenient or necessary that they themselves might appeal. The language of the section does not warrant such a construction.

Since Emprove Holdings was not a party to the QCAT proceedings, and in particular, was not the applicant for leave to appeal to it which was refused, it is not a person who may appeal under s 150(1) of the Act to this Court against the Appeal Tribunal’s refusal of leave. That is so, notwithstanding its commercial interest in the outcome of the litigation. Its application for leave to appeal to this Court is therefore incompetent.

Further, Emprove Holdings was not competent to appeal the Primary Decision in the Appeal Tribunal. The provisions of s 142(1) of the Act makes that clear. Nor may it, itself, appeal the Primary Decision directly to this Court. Hence the declaration sought in its application could not possibly be made by this Court.

In the circumstances, the application filed by Emprove Holdings must be struck out. It should pay costs on the standard basis. I bear in mind in saying the standard basis that a question of interpretation was involved in the application for which no authority was sighted to me.

The orders on Trojan Resort’s application are:

1. The application filed by Emprove Holdings on the 30th of May 2017 is struck out.
2. This application is otherwise dismissed.
3. Emprove Holdings is to pay Trojan Resort’s costs of this application and of the application filed by it on 30 May 2017, on the standard basis.

There is no basis for an application for a certificate under the *Appeal Costs Fund Act 1973* (Qld). The fact that a question of construction may have been involved, for which there was no authority, cannot of itself warrant the grant of a certificate. That application is refused.