QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Botros v AusPro Removal Pty Ltd* [2020] QCATA 59
PARTIES:	**MONA BOTROS** (appellant) **V** **AUSPRO REMOVAL PTY LTD** (respondent)
APPLICATION NO/S:	APL115-19
ORIGINATING APPLICATION NO/S:	MCDO 1104/18 (Brisbane)
MATTER TYPE:	Appeals
DELIVERED ON:	11 February 2020
HEARING DATE:	31 January 2020
HEARD AT:	Brisbane
DECISION OF:	Member Gordon
ORDERS:	**Leave to appeal is refused. This means that the appeal fails.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN NO APPEAL LIES – where applicant's claim was dismissed because there was no real evidence to support it – where it is said that the Adjudicator failed to understand the claim and ignored important evidence – whether any reasonably arguable grounds of appeal *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 140.

APPEARANCES & REPRESENTATION:	
Appellant:	Self-represented
Respondent:	Self-represented

REASONS FOR DECISION

[1] Mona Botros brings this appeal against a decision made by an Adjudicator to dismiss her minor civil dispute claim against AusPro Removal Pty Ltd. The claim brought by Ms Botros concerned a contract she had with AusPro for the collection of 10 cubic metres of furniture and personal effects from her residential premises in Brisbane and to carry and deliver them to residential premises in Melbourne. Ms Botros alleged that although AusPro picked up her items and took them down to Victoria, they were delivered late, to the wrong place and certain items were lost or damaged. In legal terms therefore, this was a breach of contract claim.

[2] On that basis, Ms Botros sought recovery back of the contract price of $890 and the storage charges of $850 which she had paid, and damages in respect of damaged or lost items in the sum of $5,000.

[3] The application was heard by a tribunal member on 4 December 2018 but the proceedings were reopened and were eventually heard afresh by an Adjudicator at a hearing on 12 April 2019.

[4] At the hearing on 12 April 2019, the Adjudicator heard the evidence of the parties and read the relevant papers. He dismissed the claim. What happened at the hearing appears from the transcript which is on the Appeal Tribunal's file. In his reasons, the Adjudicator found that the contract was for delivery of 10 cubic metres of items, and was priced to suit that volume.[1] The Adjudicator accepted the Respondent's case that as it turned out, the volume of items was more than 10 cubic metres,[2] with the result that there was insufficient space on the vehicle to take it all to Melbourne in one go, so the rest had to go to storage.[3]

[5] Delivery was therefore in two parts. Although Ms Botros was saying that some items never arrived, such as bags of clothing and boxes of papers belonging to her husband, the Adjudicator described this as an 'assertion', and found that they had in fact been diverted to storage.[4] This was a reference to storage provided by AusPro from which the items could be collected, and many were indeed collected by Ms Botros although as the Adjudicator found, she left some items behind.[5]

[6] The Adjudicator also found that none of the items were packed with bubble wrap and tape.[6] Although the quote did include blankets and straps, it did not include packing, and it was the responsibility of the owner of the goods to 'bubble wrap all fragile items'.[7] The Adjudicator found that some items had been damaged but did

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1 It was agreed by both sides that since AusPro Removals did not inspect the items to be removed, it was the owner's responsibility to measure their volume.

2 AusPro were saying that the volume was actually 40 to 45 cubic metres. The Adjudicator found that the volume was 'somewhat more than 10 cubic metres'.

3 Transcript 1-33, line 2.

4 Transcript 1-33, lines 8 and 40.

5 Transcript 1-34, line 2.

6 Transcript 1-32, line 44.

7 Quote email of 27 March 2018 and confirmation of pick up email dated 11 April 2018.

not make a finding as to exactly what had been damaged, the responsibility for such damage, nor its extent.[8]

[7] Instead, the Adjudicator dismissed the claim on the basis that the evidence from Ms Botros as to those matters was insufficient to support the claim and would mean he would have to make a finding on a mere 'assertion that damage was done' and 'no evidence of the (quantum)'.[9] Having read the transcript of the evidence given by Ms Botros at the hearing and having read the documents she submitted, the case presented by Ms Botros stands out as being particularly vague on the necessary elements to succeed – fact of damage, cause of damage, who was to blame for the damage, and if AusPro was to blame, the loss arising from such damage. There were also a number of serious inconsistencies in what she had said about the loss at different times. I am sure therefore, that the Adjudicator was right to dismiss the claim on the material before him.

The appeal

[8] The grounds of appeal appear from the notice of appeal lodged on 10 May 2019 and in subsequent written submissions. I have restated and reorganised these to make them easier to deal with, and to remove repetition. At the appeal hearing Ms Botros confirmed that these grounds represented the basis of her appeal.[10] The grounds are:-

(a) **Ground 1.** It was a mistake of law for the tribunal not to look at the amendment application, or to look at the evidence put in by Ms Botros including emails, photos, receipts and a statement from her and her witness.

(b) **Ground 2.** The judge ignored the previous decision (which was reopened) in which AusPro were ordered to pay Ms Botros $4,700 in compensation.

(c) **Ground 3.** The judge sounded confused when hearing the claim and did not understand it. His questions indicating to Ms Botros that he had 'never come across this case before' and had not read the written material beforehand.

Grounds 1 and 3 of the appeal

[9] I am taking these together because at the appeal hearing Ms Botros clarified what was meant in these two grounds, and it is now clear that there is no distinction between them. When referring to an 'amendment' in ground 1, Ms Botros clarified that she is not suggesting that the Adjudicator wrongly ignored her attempt to enlarge her claim to $7,073, an attempt which might be described as an

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8 Transcript 1-33, lines 10 and 32, 1-34 lines 2 and 18.

9 Transcript 1-34, lines 14-18.

10 There were other things referred to in the notice of appeal and submissions which appear to be irrelevant to the appeal or which cannot be relied on as grounds of appeal and therefore I have ignored these. They include the Respondent not attending the original hearing (which was reopened), the Respondent not applying early enough for leave to attend by telephone at the original hearing, the tribunal wrongly reopening the proceedings after the original hearing and not giving any good reasons for doing so or not giving any reasons at all, and the Respondent not giving Ms Botros the application for the stay application, the tribunal wrongly allowing the stay application and the tribunal not taking account of the allegation that AusPro forged the signature of Ms Botros.

'amendment'.[11] Instead, she is referring here to her response to AusPro's application to reopen. Ms Botros described this document to me in the appeal hearing. It was probably on a single page. It was simply a response to the reopening application made by AusPro which mainly concerned its non-appearance and the reason for that, and did not add anything new of relevance to the claim itself. In the circumstances it cannot be said that even if the Adjudicator did not take that argument into account, it would have made any difference to his decision.

[10] The other evidence which Ms Botros is referring to in this ground is the documentation which she attached to her original application. Although she said in the appeal hearing that there were other things which the Adjudicator ignored, she was unable to specify what those things were. Of the documents attached to the original application, I am sure that those that were relevant were not ignored by the Adjudicator. This can be seen from his acquaintance with Ms Botros's case in the hearing, as appears from the transcript.

[11] It is true that in the hearing the Adjudicator sought information and clarification from both parties about their respective cases, but that is the nature of inquisitorial proceedings and does not indicate a failure to understand the case or a failure to take the written material into account.

[12] Grounds 1 and 3 of this appeal fail.

Ground 2 of the appeal

[13] What happened was that when the matter was originally heard on 4 December 2018, AusPro did not appear at the hearing. This was caused by an unfortunate error made by the tribunal, whereby AusPro had been given leave to appear at the hearing by telephone but there was no note of that fact on the tribunal file. This meant that it appeared from the file at the hearing that AusPro's officers had simply decided not to appear.

[14] The decision of the tribunal that day was to award Ms Botros compensation in the sum of about $4,700 but AusPro objected to this in its application to reopen, which was successful.

[15] When a matter is reopened, then the tribunal must hear and decide the matter again by way of a fresh hearing on the merits.[12] This means that the Adjudicator ought not to be influenced by the earlier decision. He was right to ignore it. It must follow that this ground of appeal fails.

Conclusions in the appeal

[16] In matters such as this leave to appeal can only be given if there appears to be a reasonably arguable ground of appeal. In this appeal there is no reasonably arguable ground of appeal and so leave to appeal should not be given. This means that the appeal fails.

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11 An application lodged with the tribunal on 14 December 2018 on the form applying for 'Reopening, correction renewal or amendment', but which was not processed because it was incomplete.

12 Section 140 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld).