

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Geragotelis v Reid* [2020] QCATA 63

PARTIES: **NICKOLAS GERAGOTELIS**
(appellant)

v

PAUL REID
(respondent)

APPLICATION NO/S: APL166-19

ORIGINATING APPLICATION NO/S: MCDO 47/19

MATTER TYPE: Appeals

DELIVERED ON: 27 April 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS:

- 1. Leave to appeal granted.**
- 2. Appeal allowed.**
- 3. The Orders made on 24 May 2019 are set aside.**
- 4. The proceedings instituted by Application MCDO 47/19 are remitted to a different Tribunal panel or an Adjudicator for rehearing.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – leave to appeal – where Tribunal failed to provide adequate reasons for decision – where appellant challenged evidence and produced own at first instance – where parties must be satisfied that Tribunal has given them answer to their issues – where Tribunal at first instance did not explain basis for findings or why it accepted evidence or preferred other evidence – where Tribunal at first instance did not set out legal basis for decision or law being applied – where failure to give adequate reasons amounted to denial of procedural fairness – where error of law for which leave should be granted to correct substantial injustice

(Qld), s 28, s 121, s 143

Australian Broadcasting Tribunal v Bond (1990) 170
CLR 321

Beale v Government Insurance Office of NSW (1997) 48
NSWLR 430

*Body Corporate for Rosegum Villas v Queensland
Building and Construction Commission* [2015] QCATA
125

Cachia v Grech [2009] NSWCA 232

*Commissioner for Children and Young People and Child
Guardian v FGC* [2011] QCATA 291

Glenwood Properties Pty Ltd v Delmoss Pty Ltd [1986] 2
Qd R 388

*McIver Bulk Liquid Haulage Pty Ltd v Fruehauf
Australia Pty Ltd* [1989] 2 Qd R 577

Mistero Pty Ltd v Cann [2017] QCATA 56

Phu v NSW Department of Education and Training
[2010] NSWADTAP 76

QUYD Pty Ltd v Marvass Pty Ltd [2009] 1 Qd R 41

REPRESENTATION:

Appellants: Self-represented

Respondent: Self-represented

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

What is this appeal about?

- [1] Nickolas Geragotelis sold Paul Reid a motor scooter for \$850. Mr Reid claimed the scooter did not work. Mr Geragotelis denied this. Two Justices of the Peace allowed Mr Reid's claim. Mr Geragotelis appealed.
- [2] After hearing from both sides, the learned Justices gave their decision. The hearing transcript reveals the following exchange:¹

TRIBUNAL JP: All right. Welcome back, Mr Geragotelis. Please take your seat. This is the matter number 47 of '19. We have Paul Reid as the applicant; Nick Geragotelis as the respondent. Mr Reid bought a motorcycle/scooter from Mr Geragotelis. He tells us that it failed/stopped working, and he took it to a mechanic recommended by Mr Geragotelis and, apparently, he's been told that parts can't be provided. Our view is that Mr Geragotelis, you sold him a scooter that didn't work. So we - - -

MR GERAGOTELIS: Well, it did work. It was in A1 condition, sorry, sir.

¹ Transcript, page 1-12, lines 7-36.

TRIBUNAL JP: Well, that's – that's not our finding today.

MR GERAGOTELIS: Well - - -

TRIBUNAL JP: Our finding today is that Mr Reid will return the scooter to you. You will go to the mechanics, get the scooter from them and give the scooter and the helmet to Mr Geragotelis, and Mr Geragotelis will refund you \$850.

MR GERAGOTELIS: Well, I won't sir.

TRIBUNAL JP: As far as – wait for it, sir. As far as the interests, filing fee and bailiff: we're going to waive those because we feel that you guys could have sorted this out. You could have sorted this out. If you'd taken the scooter back to him on Christmas Eve, he would have given you the money. So that's what – that the order we're making today. So you've got – when you take him the scooter, he's got seven days to pay you.

MR REID: Yep.

TRIBUNAL JP: Okay. That's it. That's the order that's coming out.

- [3] Unfortunately, the Tribunal did not explain why it found that Mr Geragotelis had to refund the \$850 to Mr Reid. Mr Reid and Mr Geragotelis gave differing versions of events. Mr Reid said that Mr Geragotelis sold the scooter to him in faulty condition. Conversely, Mr Geragotelis said he sold it to Mr Reid 'in A1 condition'. It is implicit that the Tribunal at first instance preferred Mr Reid's version. However, it did not explain why it preferred Mr Reid's evidence over Mr Geragotelis's evidence.
- [4] While the Tribunal's finding may have been open, Ms Geragotelis is entitled to know *why* his evidence was not accepted. The reasons do not show this. Whatever the Tribunal's findings of fact, the parties must be satisfied that the Tribunal has given them an answer to their issues.² Mr Geragotelis was not given procedural fairness because he does not know why the Tribunal at first instance found against him.
- [5] Similarly, the reasons do not show any legal basis for the orders made or the law being applied. Was there a contract? What were the terms of the contract? Were they express or implied? Was there a breach? What loss flowed from the breach? Did Mr Reid mitigate the loss? Did the Australian Consumer Law or other legislation apply?
- [6] It is an error of law for the Tribunal not to provide adequate reasons for its decision if it amounts to a denial of natural justice.³ A failure to give adequate reasons is a denial of natural justice if a party cannot be confident that the case was understood and properly considered.⁴
- [7] While it is understandable that the learned Justices sought to deliver reasons with economy and brevity, the emphasis on expedition and informality does not allow the Tribunal to pursue speedy resolution at all costs.⁵ In all proceedings, the Tribunal

² *Body Corporate for Rosegum Villas v Queensland Building and Construction Commission* [2015] QCATA 125, [8].

³ *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.

⁴ *Mistero Pty Ltd v Cann* [2017] QCATA 56, [10] (Senior Member Stilgoe OAM).

⁵ *Hayward & Anor v LJ Hooker Longreach* [2013] QCATA 221, [20] (Wilson J).

must still act fairly and according to the substantial merits⁶ of the case and observe the rules of natural justice.⁷

[8] This means that the Tribunal must give proper reasons for its decision:⁸

Those reasons need not be elaborate, but they must contain three essential elements: appropriate and sufficient reference to the relevant evidence; the material findings of fact that were made (and the reasons for making those findings); and the applicable law and the reasons for applying it in the way expressed in the decision. It has also been said, in Queensland, that the crucial element is for the Tribunal to give reasons which disclose what has been taken into account in a way that means any error is revealed.⁹

[9] Because this is an appeal from a minor civil dispute, leave is required.¹⁰ In determining whether to grant leave, the Tribunal will consider established principles including:

- (a) whether there is a reasonably arguable case of error in the primary decision;¹¹
- (b) whether there is a reasonable prospect that the appellant will obtain substantive relief;¹²
- (c) whether leave is needed to correct a substantial injustice caused by some error;¹³ and
- (d) whether there is a question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage.¹⁴

[10] The Tribunal's reasons were inadequate. This is an error of law for which leave should be granted to correct a substantial injustice.

[11] Leave to appeal is granted and the appeal allowed. The matter should be remitted for rehearing before a differently constituted Tribunal, who will be in the best position to assess credibility and make appropriate findings of fact upon hearing all the evidence from the parties.

⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 28(2).

⁷ *Ibid*, s 28(3)(a).

⁸ *Ibid*, s 121.

⁹ *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291, [47] (Wilson J and Member Ford), citing *Phu v NSW Department of Education and Training* [2010] NSWADTAP 76 and *Beale v Government Insurance Office of NSW* (1997) 48 NSWLR 430.

¹⁰ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 143(3).

¹¹ *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

¹² *Cachia v Grech* [2009] NSWCA 232, 2.

¹³ *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

¹⁴ *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388, 389; *McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577, 577, 580.