

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Mine 2 Market Pty Ltd v Currumbin Minerals Pty Ltd*
[2020] QCATA 65

PARTIES: **MINE 2 MARKET PTY LTD**
(appellant)

v

CURRUMBIN MINERALS PTY LTD
(respondent)

APPLICATION NO/S: APL316-19

ORIGINATING APPLICATION NO/S: MCDO59/19 (Coolangatta)

MATTER TYPE: Appeals

DELIVERED ON: 24 April 2020

HEARING DATE: On the papers

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 the appellant offered various reasons as to why the decision of an Adjudicator should be changed – where none of the reasons could be a sufficiently arguable point on appeal – whether leave to appeal should be given

REPRESENTATION:

Appellant: 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

- [1] This is an appeal against a decision by an Adjudicator in a minor civil dispute.
- [2] On an application brought by Currumbin Minerals Pty Ltd, the Adjudicator ordered Mine 2 Market Pty Ltd (Mine 2) to pay Currumbin the sum of \$18,338.20. The debt

arose from Mine 2's occupation of Currumbin's commercial premises at an agreed rent of \$1,000 per month. It was said that the rent had remained unpaid for many months.

- [3] In its written response to the claim, Mine 2 did not say on what basis the claim was defended, but instead asked for various orders to be made, seemingly connected to a joint venture with Currumbin. It was said that Mine 2 had invested a lot of money into the joint venture, and had upgraded an electricity supply at a cost of \$72,504 and this amount should be offset against the claim for arrears of rent. Further details of this defence were given in an affidavit made on 4 December 2019, that is two days before the hearing, by the director of Mine 2, John Gibbon. In that affidavit Mr Gibbon described the joint venture as a 'partnership' between the two companies.¹ Of importance, he said that the rental was not an issue,² and that he had offered to pay \$1,000 a month in rent, seemingly on behalf of Mine 2.³ Despite that, he suggested that Currumbin's evidence related to a different company.⁴ Again he said that the claim for arrears should be offset by \$72,504 which amount may be owed by Currumbin.⁵
- [4] The Appeal Tribunal has obtained a transcript of the hearing. At the hearing the Adjudicator indicated awareness of an issue about whether the correct company was being pursued for the rental payments. The Adjudicator examined this with the parties. The Adjudicator was taken through the emails alleged to evidence the rental agreement, and was shown on Currumbin's behalf, documents showing Mine 2's occupation of the premises and payment of invoices for rent. The Adjudicator was also directed to the affidavit from Mr Gibbon made on 4 December 2019 which seemed to corroborate what was being said on behalf of Currumbin.⁶
- [5] At the hearing, Mr Gibbon said that Mine 2 was in partnership with Currumbin and under that arrangement there was a right of occupation of the premises,⁷ that occupation of the premises was taken up and continued,⁸ and that it was also true that he had sought some time to pay the rent in a meeting with a director of Currumbin, as stated by a director of Currumbin in an affidavit.⁹
- [6] On the strength of this evidence the Adjudicator in the hearing said to Mr Gibbon that there seemed to be a strong case showing a rental agreement between Currumbin and Mine 2 as alleged, and that the rent was in arrears. Mr Gibbon accepted this.¹⁰
- [7] On the question of a possible set-off the Adjudicator pointed out to Mr Gibbon that there was no counter application and procedurally it was not possible to make a counter application in a minor debt claim, but that Mine 2 could have made a

¹ Paragraph 15 of the affidavit of John Gibbon made on 4 November 2019.

² Paragraph 2.

³ Paragraph 4.

⁴ Paragraph 7.

⁵ Paragraph 15.

⁶ Transcript 1-6 to 1-11.

⁷ Transcript 1-11 line 33.

⁸ Transcript 1-16 line 43.

⁹ Transcript 1-17 line 47 referring to the affidavit of Bruce Neumann made on 23 September 2019.

¹⁰ Transcript 1-18 line 40.

separate application instead.¹¹ But the Adjudicator pointed out that in any case a claim for \$72,504 was beyond the tribunal's jurisdiction.

- [8] The appeal in its original form seems to be based upon events which happened after the Adjudicator's order. It is said that Mine 2 offered Currumbin a cheque for \$18,338.20 to satisfy the tribunal's order but it was given to Currumbin subject to there being an agreement about other matters. Because there was no agreement, the cheque was taken back.¹² In the appeal it seems to be said that Currumbin should have agreed to what was on offer. There is also a complaint that it was not recorded in the Adjudicator's order that on payment of the arrears Mine 2 could remove certain equipment on the premises which it claimed to own.
- [9] In subsequent submissions in the appeal the following points were made:
- (a) The partnership was not between Currumbin and Mine 2, but was instead between Currumbin and either Mine 2 Market SARL Monaco or Mine 2 Market Limited in the UK, or both of them.¹³
 - (b) All rental discussions and correspondence about renting the premises were between Currumbin and the Monaco company and/or the UK company and not with Mine 2,¹⁴ and so there was no 'rental relationship' with Mine 2.¹⁵
 - (c) The UK company invested a large amount of money in Currumbin which exceeded the order made with respect to rent.¹⁶
- [10] In so far as the appeal is an attempt to show that the Adjudicator should have made a different finding about whether Mine 2 was obliged to pay rent for the premises at the agreed rate over the period concerned, there was clearly an abundance of evidence on which the Adjudicator could make this finding. An appeal is not an opportunity to change a decision which was properly made on the evidence. Any such ground of appeal is bound to fail.
- [11] In so far as the appeal is about whether the Adjudicator should also have provided in the order that Mine 2 could remove certain equipment from the premises, although it is true that the tribunal can impose a condition on an order,¹⁷ the difficulty is that Currumbin was unwilling to agree to such a term in the hearing. In those circumstances the Adjudicator declined to make an order in that respect.¹⁸ The Adjudicator was clearly right to take that view. To impose such a condition was fraught with legal difficulty and was not before the Adjudicator as a formal application.

¹¹ Transcript 1-23 line 37.

¹² This was stated in a letter dated 21 November 2019. However, a letter written on Currumbin's behalf on 20 November 2019 says that the cheque was accepted by Currumbin. This letter, it seems, was sent to the tribunal on 16 January 2020 by Mine 2.

¹³ Paragraph 2 of second affidavit of 20 December 2019 filed on 16 January 2020. There is an ASIC search in the minor civil dispute file showing that Mine 2 is a wholly owned subsidiary of the UK company Mine 2 Market Limited.

¹⁴ Paragraph 2a of first affidavit of 20 December 2019 filed on that day.

¹⁵ Paragraph 2c of first affidavit of 20 December 2019 filed on that day.

¹⁶ Paragraphs 5 and 7 of second affidavit of 20 December 2019 filed on 16 January 2020.

¹⁷ Section 114 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

¹⁸ Transcript 1-34 line 12.

- [12] In so far as the appeal is about whether the alleged set-off was properly handled by the Adjudicator, there were three difficulties with Mine 2's claim for a set-off. The first was that the amount of the alleged set-off far exceeded the amount of the arrears, yet there was no counter application to enable the issues in the set-off to be determined properly. Secondly it was not obvious that the subject matter of any such counter application would have been within the tribunal's jurisdiction. Certainly, any such counter application would have greatly exceeded the tribunal's prescribed financial limit. Finally and fatally however, the subject matter of the set-off was not sufficiently linked or connected to the rent agreement to be dealt with as a set-off. In the circumstances the Adjudicator clearly handled the question of the set-off properly.
- [13] This matter was heard in the minor civil dispute jurisdiction of the tribunal and an appeal in respect of it cannot progress without leave. Leave will not be given unless there is an arguable ground of appeal or unless there is another good reason to give leave. None of the grounds of appeal are arguable so I must refuse leave. This means that the appeal fails.