

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Siena Indiana Pty Ltd v Property Technologies Pty Ltd*
[2020] QCATA 79

PARTIES: **SIENA INDIANA PTY LTD**
(appellant)

v

PROPERTY TECHNOLOGIES PTY LTD
(respondent)

APPLICATION NO/S: APL238-19

ORIGINATING APPLICATION NO/S: MCDO 61125/18

MATTER TYPE: Appeals

DELIVERED ON: 25 May 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS:

- 1. Leave to appeal granted.**
- 2. Appeal allowed.**
- 3. The decision of 31 July 2019 is set aside.**
- 4. The application is dismissed for want of jurisdiction.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where applicant applied for leave to appeal – where Tribunal originally dismissed claim for want of jurisdiction – where claimant refiled same claim - whether claim was minor civil dispute or building dispute – where enabling Act conferred jurisdiction as building dispute

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – where enabling Act prescribed early dispute resolution process – where respondent did not comply with process – where respondent estopped from filing application for same cause of action until it complied with jurisdictional prerequisites - where error of law had effect of conferring

jurisdiction when there was none

Queensland Building and Construction Commission Act 1991 (Qld), s 75, s 77, Schedule 2

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 3, s 12, s 47, s 143, s 146, Schedule 3

Big4 Brisbane Northside Caravan Village v Schliebs [2012] QCAT 277

Cachia v Grech [2009] NSWCA 232

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

Jackson v Goldsmith (1950) 81 CLR 446

Leyden v N J Tierney Constructions Pty Ltd [2015] QCAT 483

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

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

Redding v Simmons [2016] QCATA 100

Rothenberger Australia Pty Ltd v Poulsen (2003) 58 NSWLR 288

Walsh v Australian Building and Construction Group [2016] QCAT 187

REPRESENTATION:

Applicant: 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] On 21 May 2018, the Tribunal dismissed a claim for services by Property Technologies Pty Ltd (“PT”) against Siena Indiana Pty Ltd (“Siena”) due to want of jurisdiction. This was on the basis that the claim was for building work and PT had not complied with the pre-proceedings process.
- [2] PT claimed it then approached the Queensland Building and Construction Commission who advised that this was a minor debt dispute for which it did not have jurisdiction and as the works were completed more than six months earlier, PT was out of time to go through the pre-proceedings process.
- [3] On 9 August 2018, PT re-filed an Application for minor civil dispute - minor debt. On 31 July 2019, a differently constituted Tribunal ordered Siena pay to PT the sum of \$16,788.00 for services performed. Siena appealed on two grounds:

- (a) Lack of jurisdiction – because PT did not comply with a pre-proceedings process, the Tribunal did not have jurisdiction to decide the claim; and
- (b) Res judicata – because the claim had been previously dismissed for lack of jurisdiction, proceedings could not be reissued for the same cause of action.

[4] The appeal must succeed for the below reasons.

Did the Tribunal have jurisdiction to decide the claim?

[5] The Tribunal’s original decision to dismiss the application for want of jurisdiction is correct. PT’s submission that because this is not a dispute over the quality of building works but rather an unpaid invoice dispute, does not deem it a minor debt dispute.

[6] Section 12 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) confers the Tribunal’s jurisdiction over minor civil disputes. A ‘minor civil dispute’ relevantly includes a claim to recover a debt or liquidated demand.¹ The claim is for a specific amount and therefore liquidated.²

[7] However, the definition of ‘minor civil dispute’ also provides:³

- 2 However, if an enabling Act confers jurisdiction on the tribunal to deal with a claim (however called) within the meaning of paragraph 1(a), the claim is not a minor civil dispute unless the enabling Act expressly states it is a minor civil dispute.

[8] The effect of sub-paragraph 2 is to remove a claim that can be characterised as both a ‘building dispute’ and a ‘minor civil dispute’ from the Tribunal’s minor civil disputes jurisdiction. This means that the claim will not be a ‘minor civil dispute’ if an enabling Act also confers jurisdiction on the Tribunal to deal with it.

[9] Here, the enabling Act is the *Queensland Building and Construction Commission Act 1991* (Qld). Section 77 of that Act gives the Tribunal jurisdiction over a ‘building dispute’. The process by which the Act confers jurisdiction is:

- (a) ‘Building dispute’ relevantly includes a commercial building dispute;
- (b) ‘Commercial building dispute’ relates to a contract to perform reviewable commercial work;
- (c) ‘Reviewable commercial work’ means tribunal work other than reviewable domestic work;
- (d) ‘Tribunal work’ relevantly includes:
 - (i) The erection or construction of a building;

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 12(4)(b), Schedule 3.

² *Rothenberger Australia Pty Ltd v Poulsen* (2003) 58 NSWLR 288, 297.

³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), Schedule 3.

- (ii) The provision of electrical work, water supply, sewerage or drainage or other like services for a building;
- (iii) The preparation of plans, specifications or bills of quantity for the carrying out of tribunal work;
- (iv) Advisory services, administration services, management services or supervisory services relating to the tribunal work; and
- (v) Entering into a contract to carry out tribunal work or submitting a tender or making an offer to carry it out.⁴

[10] The project related to the construction of five townhouses.⁵ PT is a self-described “building services engineering firm” who “completed project management works for the project”.⁶ It previously did the electrical, mechanical and hydraulic building services design and obtained development approval for the project.⁷

[11] PT provided a “quotation for project management services”.⁸ That quote is entitled ‘Submission For Project Management’ and relevantly included these services:

- (a) Pre-project analysis including project design cost and build cost estimates;
- (b) Feasibility studies with town planner and builder, work through environmental impact studies, preliminary schematic design;
- (c) Design management including present designs for review and further costing feasibility studies and cost planning etc;
- (d) Documentation management including overview certification process; and
- (e) Construction management.

[12] Following development approval, PT attended weekly meetings, obtained certifications and put “everything together for forwarding to the surveyor at the end of the project” and “basically problem solved throughout it”.⁹ PT’s invoice included items for project management, pre-project analysis, pre-design management, design management, documentation management and pricing management.

[13] The Appeal Tribunal is satisfied that PT’s services for the project fall within the definition of ‘tribunal work’. At the very least, PT was providing advisory services, management services or supervisory services and the preparation of plans and specifications relating to the townhouses. Because PT’s claim is for payment for ‘tribunal work’, it is properly characterised as a ‘building dispute’.

⁴ *Queensland Building and Construction Commission Act 1991* (Qld), s 75, s 77(1), Schedule 2.

⁵ Transcript dated 31 July 2019, page 1-7, line 2.

⁶ Transcript dated 31 July 2019, page 1-2, lines 27 to 28.

⁷ Transcript dated 31 July 2019, page 1-5, lines 3 to 4; page 1-6, lines 34 to 35; page 1-7, lines 33 to 35.

⁸ Transcript dated 31 July 2019, page 1-3, lines 13 to 14.

⁹ Transcript dated 31 July 2019, page 1-6, lines 45 to 47.

- [14] Because the claim is a ‘building dispute’, the enabling Act prescribes the procedures to be followed and, to the extent of any inconsistency between that procedure and the provisions of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), the enabling Act prevails.¹⁰
- [15] This means that PT was required to file evidence of participating in early dispute resolution under section 77(2) of the *Queensland Building and Construction Commission Act 1991* (Qld). The early dispute resolution process is meant to provide a quick and cheap way of resolving building disputes. That is consistent with the objects of the QCAT Act to have the Tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick.¹¹
- [16] Because compliance with section 77(2) is the gateway through which an applicant must pass before filing an application for a building dispute,¹² PT’s non-compliance is fatal to its application:¹³

Section 77(2) QBCC Act is expressed in clear and unequivocal terms. A person may not apply to the tribunal to decide a building dispute unless the person has complied with a process established by the QBCC to attempt to resolve the dispute. Compliance with the section is a precondition to the jurisdiction of the Tribunal being enlivened. The provision is not merely procedural, it is mandatory and has substantive effect. The Tribunal cannot exercise the powers conferred by s 61 QCAT Act to waive compliance with s 77(2) QBCC Act.

- [17] The consequence of PT not complying with section 77(2) of the *Queensland Building and Construction Commission Act 1991* (Qld) is that the Tribunal does not have jurisdiction to determine its claim. It does not matter that PT filed its application as a minor civil dispute – minor debt.¹⁴
- [18] Both PT’s original application and later application are misconceived.¹⁵

Should the Appeal Tribunal grant leave to appeal?

- [19] Because this is an appeal from a minor civil dispute, leave is required.¹⁶
- [20] 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;¹⁷

¹⁰ *Big4 Brisbane Northside Caravan Village v Schliebs* [2012] QCAT 277, [31] (Wilson J).

¹¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 3(b).

¹² *Walsh v Australian Building and Construction Group* [2016] QCAT 187, [8], citing with approval *Leyden v N J Tierney Constructions Pty Ltd* [2015] QCAT 483.

¹³ *Ibid*, [12], citing with approval *Redding v Simmons* [2016] QCATA 100.

¹⁴ *Walsh v Australian Building and Construction Group* [2016] QCAT 187, [13].

¹⁵ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 47.

¹⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 143(3).

¹⁷ *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

- (b) whether there is a reasonable prospect that the appellant will obtain substantive relief;¹⁸
- (c) whether leave is needed to correct a substantial injustice caused by some error;¹⁹ 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.²⁰

[21] The Tribunal as it was originally constituted was correct to dismiss PT's first application for want of jurisdiction. Although the original Tribunal did not make any substantive findings, it did (correctly) decide the issue of jurisdiction. Having done so, PT was estopped from filing another application for the same cause of action until it complied with the jurisdictional prerequisites.²¹ It did not.

[22] The differently constituted Tribunal's finding that this was not a building dispute is therefore an error of law that had the effect of conferring jurisdiction when there was none.

[23] Leave to appeal is granted and the appeal allowed.

[24] Because the appeal is allowed on a question of law, the Appeal Tribunal may set aside the decision and substitute its own decision.²²

[25] The application is misconceived and dismissed for want of jurisdiction.²³

¹⁸ *Cachia v Grech* [2009] NSWCA 232, 2.

¹⁹ *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

²⁰ *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.

²¹ *Jackson v Goldsmith* (1950) 81 CLR 446.

²² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 146(b).

²³ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 47.