

SUPREME COURT OF QUEENSLAND

CITATION: *Pingel v R & R Leach P/L & Ors* [2002] QCA 275

PARTIES: **DEREK CHARLES PINGEL as Licensee for PINGEL HOMES**
(appellant/respondent)

v

R & R LEACH PTY LTD ACN 081 599 813
(first respondent/first appellant)

JAMADON PTY LTD ACN 064 531 022
(second respondent/second appellant)

ROBIN JEANNE LEACH
(third respondent/third appellant)

LESLIE RAYMOND LEACH
(fourth respondent/fourth appellant)

FILE NO/S: Appeal No 3223 of 2002
DC No 5837 of 2001

DIVISION: Court of Appeal

PROCEEDING: Application for leave s 118 DCA (Civil)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 2 August 2002

DELIVERED AT: Brisbane

HEARING DATE: 23 July 2002

JUDGES: de Jersey CJ, Jerrard JA and Wilson J

Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. That the application for leave to appeal be granted.**

2. That the appeal be dismissed with costs.

3. That the appellants pay the respondent's costs of and incidental to the appeal, to be assessed on the standard basis.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – AS OF RIGHT – where statute conferred jurisdiction on District Court to hear appeal from decision of Queensland Building Tribunal that “finally decides matters the subject of the proceeding” – where Tribunal had determined liability but not quantum – whether District Court could hear appeal in

respect of Tribunal decision on liability before all other matters in dispute between the parties had been finally resolved

Acts Interpretation Act 1954 (Qld), s 14B(1)(c), s 32C

Queensland Building Tribunal Act 2000 (Qld), s 4, s 5, s 29(a), s 41, s 42, s 76, s 83, s 92(1), s 131, s 132, s 133, s 152

COUNSEL: M J F Burnett for the appellants
G R Allan for the respondent

SOLICITORS: Damien Alroe for the appellants
Hede Byrne & Hall for the respondent

- [1] **DE JERSEY CJ:** I have had the advantage of reading the reasons of judgment of Wilson J. I agree that the appeal should be dismissed for the reasons expressed by Her Honour. (I also agree with her other proposed orders.)
- [2] A particularly powerful textual consideration is the contrast between the reference in s 92(1), according the right of appeal, to “matters” (absent the definite article), and the reference in s 41(3), dealing with the manner of conducting a proceeding overall, to “the matters before the Tribunal”.
- [3] **JERRARD JA:** I have had the advantage of reading the reasons for judgment and proposed orders of Wilson J. I respectfully agree with those reasons and orders.
- [4] Counsel for the appellants agreed in argument that the construction he advanced for s 92(1) would produce the same result that would ensue if the words “matters the subject of” had been omitted from the section. I think preferable construction is the one which gives a relevant meaning to those words actually appearing.
- [5] **WILSON J:** This is an application for leave to appeal against a decision of a District Court judge refusing to strike out an appeal from a decision of the Queensland Building Tribunal. The applicant appellants before this Court (“Leach”) were the respondents to the appeal before the District Court.
- [6] On the hearing of the application for leave to appeal, this Court indicated that it was minded to grant the application for leave to appeal, and received submissions on the merits of the appeal.
- [7] Pingel brought a proceeding in the tribunal against Leach for damages for breach of a domestic building contract, and Leach counterclaimed for damages for breach of contract. The tribunal apparently decided to determine liability and quantum separately. There was a hearing on liability, after which a member of the tribunal gave a decision on liability, and invited the parties to negotiate on quantum. Pingel appealed to the District Court against the decision on liability. Leach made an unsuccessful application to have the appeal struck out for want of jurisdiction.
- [8] This application raises the proper interpretation of s 92(1) of the *Queensland Building Tribunal Act 2000* which is in these terms -

"Appeals

92.(1) A party to a proceeding before the tribunal may appeal to the District Court against a decision of the tribunal that finally decides matters the subject of the proceeding."

Should the reference to "matters" be interpreted as a reference to "all matters" or as a reference to "any matter or matters"? Of course, the plural may include the singular (*Acts Interpretation Act* 1954, s 32C).

- [9] The learned primary judge determined that "matters" refers to "any matters". He concluded -

"...the right of appeal is given in respect of any decision of the Tribunal by which it finally decides any matters the subject of the proceeding. That would include a final decision of a single matter which is the subject of the proceeding: *Acts Interpretation Act* s. 32C(b). In the present case there have been a number of matters which have been finally determined as a result of the decision on liability. In my opinion there is therefore a right of appeal from that decision. ..."

- [10] The objects of the *Queensland Building Tribunal Act* and how they are to be achieved are set out in ss 4 and 5 of the Act. Broadly, the objects are to establish the tribunal and to have it deal with certain building disputes (including domestic building disputes), the review of decisions of the Queensland Building Services Authority, applications by that authority (eg of a disciplinary nature or for recovery of moneys pursuant to a statutory insurance scheme), and applications that may be made to it under that and other legislation. Section 5 provides –

“5. The objects of this Act are to be achieved by establishing a system of dispute resolution that –

- (a) is just in the results it delivers; and
- (b) is fair by –
 - (i) ensuring litigants have an equal opportunity, regardless of their resources, to assert or defend their legal rights; and
 - (ii) giving parties to proceedings an opportunity to state their case and to answer their opponent’s case; and
 - (iii) treating like cases alike; and
- (c) has a range of procedures available and minimises costs to the extent practicable; and
- (d) deals with applications with reasonable speed and encourages the early resolution of disputes; and

- (e) is understandable to users of the system; and
- (f) is responsive to the needs of users of the system; and
- (g) allows parties to represent themselves and save legal costs wherever appropriate.”

[11] By s 29(1) "A proceeding for a matter for which the tribunal has jurisdiction" is commenced by the filing of an application. The Act goes on to afford the tribunal very considerable flexibility in relation to such a proceeding. By ss 41 and 42 -

“**41.(1)**This section applies to a proceeding.

(2) The procedure is at the discretion of the tribunal, subject to this Act and the rules of natural justice.

(3) The proceeding is to be conducted with as little formality and technicality and with as much speed as the requirements of this Act and a proper consideration of the matters before the tribunal permit.

(4) The tribunal is not bound by the rules of evidence but may inform itself in any way it considers appropriate.

(5) The tribunal may, if appropriate, conduct the proceeding by means of telephone conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between persons taking part in the proceeding.

(6) The tribunal may decide all or part of the proceeding from a consideration of the documents filed, without the parties or witnesses appearing in person if –

(a) the parties to the proceeding agree; and

(b) the tribunal considers it appropriate in all the circumstances.

Directions and orders

42.(1) The tribunal may make orders, give directions and do whatever is necessary for the expeditious, just, fair and cost effective resolution of a proceeding.

(2) The power to give directions under subsection (1) is subject to practice directions under section 13(2)(c).

(3) Without limiting subsection (1), the tribunal may at any time–

- (a) set time limits for the completion of anything to be done in relation to the proceeding; and
- (b) require a party to the proceeding to give the tribunal either or both of the following if the tribunal considers it may be relevant to the proceeding –
 - (i) a document in the party's possession or control;
 - (ii) any other information or evidence.

(4) A party must comply with an order or direction within the time stated in the order or direction unless the party applies to the tribunal for and is granted an extension of time to comply with the order or direction.

(5) The tribunal, on application of a party or on its own initiative, may at any time vary or revoke an order or direction given by it.

(6) The tribunal may not vary or revoke an order or direction given by it if to do so would cause any prejudice or detriment to a party or potential party that can not be remedied by an appropriate order for costs or damages.”

[12] Section 41(3) constrains the tribunal's capacity to choose its own procedures by consideration of (inter alia) what "a proper consideration for the matters before the tribunal permit". Clearly the tribunal must survey all the matters (ie all the issues) in the proceeding in selecting the most appropriate procedures.

[13] The tribunal may require the parties to attend pre-hearing conferences at which issues may be identified and clarified and directions given about the conduct of the proceeding (s 152). Either side may apply for a summary decision (ss 131, 132): it is envisaged that such a summary decision may not dispose of all claims in issue in a proceeding, and provision is made for the continuation of any part of the proceeding not disposed of by the summary decision: s 133. The tribunal may call for an expert report on "a matter of a technical nature arising in the course of a proceeding for investigation by an appropriate expert": s 76.

[14] Tribunal decisions and their enforcement are dealt with in ss 83 - 86. Section 83 provides -

"Form of decisions of tribunal

83.(1) A decision of the tribunal that finally decides matters the subject of the proceeding –

- (a) must be in writing; and
- (b) must state the decision, and the reasons for the decision; and

(c) may be published.

(2) To remove doubt, it is declared that this section does not apply to a pre-hearing conference."

A person may register a decision in an appropriate court, and then it may be enforced as an order of that court: s 85.

- [15] It is entirely consistent with these provisions that issues may be determined separately. In the present case it was clearly within the tribunal's powers to determine liability separately from quantum. Further, there can be no warrant for suggesting that the tribunal is not bound to comply with s 83 when it decides a separate issue. In other words, it could not withhold its decision on such a separate issue or the reasons for it until the final determination of all matters (ie of all issues) in the proceeding.
- [16] Section 92 is cast in the same terms as s 83 - "a decision of the tribunal that finally decides matters the subject of the proceeding". It would defeat the flexibility that is an essential feature of the legislative scheme if issues could be determined separately, but it were necessary to await the determination of all other issues before the right of appeal arose.
- [17] There is, of course, no right of appeal against interlocutory or procedural orders or directions: that is plainly the meaning of the requirement that the decision be one that "finally decides matters the subject of the proceeding". (This is confirmed by the Explanatory Notes which accompanied the bill when it was introduced into Parliament: see *Acts Interpretation Act* s 14B (1)(c).)
- [18] In my view, the learned primary judge interpreted s 92 correctly. I would grant the application for leave to appeal, dismiss the appeal, and order the applicants to pay the respondent's costs of the application and the appeal to be assessed (on the standard basis).