SUPREME COURT OF QUEENSLAND

CITATION:	*Amos v Elizabeth Hall, Referee, Small Claims Tribunal & ors* [2006] QSC 397
PARTIES:	**EDWARD AMOS** (applicant) **AND** **ELIZABETH A HALL, Referee, SMALL CLAIMS TRIBUNAL, Brisbane** (first respondent) **AND** **PHILLIP KEITH HUMBLER** **DARREN NEAL WOODHALL** (second respondents)
FILE NO/S:	4101 of 2006
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court Brisbane
DELIVERED ON:	19 December 2006
DELIVERED AT:	Brisbane
HEARING DATE:	25 October 2006
JUDGE:	Atkinson J
ORDER:	**Application dismissed with costs**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – PROCEDURAL FAIRNESS – GENERALLY – where the applicant sought a statutory order of review to have the decision of the first respondent quashed – where there were eight separate grounds of application including bias, denial of natural justice and ors – whether the grounds of the application are capable of being raised as a basis for reviewing a decision of the Small Claims Tribunal ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – DISTINCTION BETWEEN ADMINISTRATIVE AND JUDICIAL FUNCTIONS – whether a decision of a Small Claims Tribunal was a decision of an administrative character
COUNSEL:	Applicant appeared in person
SOLICITORS:	Keller Nall & Brown for the applicant

[1] The applicant, Edward Amos, sought a statutory order of review pursuant to the *Judicial Review Act 1991* (the JR Act) in order to have a decision of the first respondent quashed. That decision was made on 21 April 2006 in the Small Claims Tribunal in Small Claim No. 6750/05. Mr Amos alleged that he was a person aggrieved because he was denied natural justice, the first respondent was biased against him and the first respondent failed to function as required by s 10(1) of the *Small Claims Tribunals Act 1973* (the SCT Act).

[2] The grounds of the application and a complaint about a failure to provide a written statement were set out as follows:-

(1) that a breach of the rules of natural justice happened in relation to the making of the decision;

(2) that the first respondent was biased against the applicant;

(3) that procedures that were required by law to be observed in relation to the making of the decision were not observed;

(4) that the making of the decision was an improper exercise of the power conferred by the enactment under which the decision was made;

(5) that the decision was so unreasonable that no reasonable repository of the power could have taken the decision;

(6) that there was no evidence or other material to justify the making of the decision;

(7) that the decision involved an error of law;

(8) that the decision was otherwise contrary to law; and

(9) that the first respondent has failed to supply the applicant with a written statement pursuant to s 32(1) of the JR Act.

[3] The application has been before this court on a number of occasions where various directions have been given: on 26 May, 13 June, 11 July and 4 October 2006. On 13 June 2006, Mr Amos's application for a written statement of reasons from the first respondent in relation to her decision to dismiss Small Claim No. 6750/05 was dismissed. The first respondent was given leave to withdraw. The matter was set down to be heard on 25 October 2006. On that date Mr Amos applied for an adjournment but that adjournment was refused.

[4] The applicant appeared on his own behalf although court documents show that he is represented by a firm of solicitors Keller Nall & Brown. The first respondent quite properly indicated an intention to abide by the order of the court. The second respondents were not represented and did not appear so there was no adequate contradictor on the hearing of the application for a statutory order of review.

The hearings in the Small Claims Tribunal

[5] In order to understand the nature of the application it is necessary to refer to the history of the litigation between the parties. The factual background, as best it can be deduced from the affidavit material filed by the applicant, is that Mr Amos, who refers to himself as a real estate agent, entered into a residential tenancy agreement, as lessor, with the second respondents, as tenants, on 31 October 2005 for a term of twelve months. The tenancy agreement which is governed by the *Residential Tenancies Act 1994* contained a number of additional special conditions. I have not been asked to determine whether any or all of those additional special conditions are valid.

[6] On 22 December 2005, Mr Amos filed an urgent application with the Small Claims Tribunal for termination of the tenancy and a warrant of possession. He indicated he was claiming for expenses, lost income and/or refund of the rental bond but he did not provide details saying that they were not yet able to be quantified. However he did specify the value of the rental bond at $800. He asserted that he had given a Notice to Remedy Breach on 5 December 2005 for rent arrears and on 13 December 2005 had given notice to leave which expired on 20 December 2005. A copy of the Notice to Remedy Breach which was said to have been served on the tenants was apparently issued on 5 December 2005 in respect of non-payment of rent which was said to have been due on 28 November 2005.

[7] The parties were given a date for hearing in the Small Claims Tribunal of 17 January 2006 at 11.00am. On that date the following order was made:

> "The Residential Tenancy Agreement between the parties be terminated as from midnight on the 18.01.2006 on the grounds of Failure to Leave. A Warrant of Possession to issue authorising a police officer to enter the premises at 118 Oriel Road, Clayfield Qld 4011. The Warrant shall take effect on 18.01.2006 and remain in effect for 14 days, to expire at 6.00pm on 31.01.2006. The Warrant to be executed as soon as reasonably practicable after taking effect. Entry under the Warrant shall only be between the hours of 8.00am and 6.00pm. That the claim for compensation be relisted for hearing on filing of a Statement of Claim by the claimant."

[8] Mr Amos says that a Statement of Claim for compensation was filed by him on 22 March 2006. It appears by that time he had already received the bond from the Residential Tenancy Authority and was seeking outstanding rent until 19 March 2006 together with other expenses. He included material in support of that claim with his Statement of Claim although he provided no evidence of his efforts to relet the premises or as to why the claim was reasonable. The parties were informed that

the hearing would take place on 21 April 2006 at 2.00pm. On that date the matter was heard and the Small Claims Tribunal ordered that the claim be dismissed.

[9] There is a statutory prohibition on any official record being taken of the evidence before a Small Claims Tribunal.[1] Mr Amos has asserted that he made notes of what happened during the Small Claims Tribunal hearing while the matter was fresh in his mind. However he has not exhibited those notes nor placed them before this court. In the absence of a transcript or a copy of the contemporaneous notes, his version of what occurred must be treated with some caution.

The function of the Small Claims Tribunal

[10] The role of the Small Claims Tribunal was comprehensively explained by Byrne J in *W & T Enterprises (Q) Pty Ltd v K O Taylor, Referee, Small Claims Tribunal*[2]:

> "**Operation of Small Claims Tribunals**
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> [1] When the first Small Claims Tribunal was established in Queensland more than 30 years ago, it consisted of one referee, who was responsible for disposing of all Small Claims in the State. Over the years, the jurisdiction of these tribunals has gradually been enlarged. As the volume of claims increased, the legislation was amended to appoint all magistrates as referees.
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> [2] By the 1990s, the work of the tribunals ranged over claims for payment and relief from payment, of money "not exceeding the prescribed amount", as well as contests involving motor vehicle property damage, dividing fences, and rental bonds. In 1994, all residential tenancies disputes came within their jurisdiction – an initiative that resulted in a rapid increase in workload. In 1999, the Brisbane Tribunal alone processed more than 7,000 claims.
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> [3] The popularity of the tribunals, with government and the community, is influenced by the informality of the proceedings and the finality of outcomes.
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> [4] Small Claims Tribunals function without the usual formalities of a court, are not bound by the rules of evidence, and before a lawyer may be heard, all parties must agree.
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> [5] Finality is an important characteristic of orders of the tribunals. Several legislative provisions combine to restrict the scope for challenges to determinations of referees: no official record of evidence is kept; "no appeal shall lie in

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1 SCT Act 1973 s 14(1).

2 [2005] QSC 360.

respect" of a settlement or order; and, most significantly for present purposes, by s 19 of the *Small Claims Tribunal Act* 1973 ("SCTA"):

> "No writ of certiorari, or prohibition, or other prerogative writ shall issue, and no declaratory judgment shall be given in respect of a proceeding taken or to be taken by or before a small claims tribunal or in respect of any order made therein save where the court before which such writ or judgment is sought is satisfied that the tribunal had or has no jurisdiction conferred by this Act to take the proceeding or that there has occurred therein a denial of natural justice to any party to the proceeding."

[6] Almost two decades after the Small Claims Tribunal began operation, Part 5 of the *Judicial Review Act* 1991 ("JRA") abolished recourse to mandamus, prohibition and certiorari. This change was about form, not substance: Part 5 substituted for those prerogative writs "relief or remedy" to the same effect, to be obtained from the Supreme Court on an "application for review"."

[11] It follows from this analysis that all but the first two grounds of the application are incapable of being raised as a basis for reviewing a decision of a Small Claims Tribunal under s 19 of the SCT Act. The complaint made in this case that falls within the exception in s 19 is an alleged failure to accord natural justice, consisting of a failure to hear from the applicant and a complaint of bias.

Statutory order of review

[12] The applicant filed an application for a statutory order of review under the JR Act pursuant to r 566 of the Uniform Civil Procedure Rules (UCPR) which provides that an application for a statutory order of review must be made in accordance with form 54. A statutory order of review is available only for an administrative decision, and not a judicial decision. As Byrne J held in *W & T Enterprises (Q) Pty Ltd v K O Taylor*,[3] a decision by a Small Claims Tribunal is characterised as judicial, and not administrative. Such a decision is not a decision to which the JR Act applies as that phrase is defined in s 4 of the JR Act. It cannot therefore be the subject of a statutory order of review which is only available for decisions of an administrative character.

[13] It follows that the application in its present form is incapable of giving rise to any relief.

Application for review

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[3] (supra) at [52].

[14] An application for review, which must be made under r 567 in accordance with form 43, is the appropriate application to make with regard to a judicial decision. No such application has been made in this case.

[15] Where an application for a statutory order of review has been filed, the court is given a discretion, under r 569 of the UCPR, to order the proceeding to continue as if it had been started as an application for review. However no such order has been made. Neither has it been sought from me. In those circumstances the occasion has not arisen for the exercise of any discretion to treat the application for statutory order to review as an application for review.

[16] Even if such an order had been sought there are a number of factors which suggest that the discretion would not be exercised in the applicant's favour in this case. The procedure in the Small Claims Tribunal is meant to be informal and the decision final and binding.[4]

[17] Further, the applicant is unlikely to have been successful on an application for review. While the tribunal is required to afford natural justice, the content of the hearing rule is determined in light of the Small Claim Tribunal's Jurisdiction and the statutory requirements as to how that jurisdiction is to be exercised.[5]

[18] Mr Amos claims a denial of natural justice because he was asked to sit at the right-hand rather than the left-hand end of the bar table, the referee first asked questions of the respondents, and he was not allowed to present his case or elicit material in support of his claim, cross-examine the second respondents or make submissions. However, it does appear that he did present the written material in support of his case with his application and was able to make submissions in support of his case in response to questions by the referee. There is no absolute right to cross-examine in such proceedings. The complaint about where the applicant was required to sit is frivolous.

[19] The referee told the applicant that she found his claim to be oppressive and dismissed it. The applicant has not adduced any evidence of bias. In these circumstances it could not be said that there was clearly a breach of natural justice.

[20] This leads to the conclusion that an application for review would have been likely to have been dismissed in any event and suggests that the court's discretion to treat an application for statutory order of review which has been wrongly commenced as an application for review would not be exercised in the applicant's favour in this case.

Conclusion

[21] The application for statutory order of review should be dismissed as the decision of the Small Claims Tribunal is a judicial decision not amenable to such an order.

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4 SCT Act 1973 s 18(1).

5 See *Kioa v West* (1985) 159 CLR 550 at 585.

Even if the application had been commenced by an application for review or the court had exercised its discretion to treat it as an application for review it would have been dismissed on the merits. The application is dismissed with costs.