

COURT OF APPEAL

**FRASER JA
GOTTERSON JA
DOUGLAS J**

**Appeal No 2340 of 2012
SC No 6704 of 2009**

EDWARD AMOS

Appellant

v

BRISBANE CITY COUNCIL

Respondent

BRISBANE

DATE 13/08/2012

JUDGMENT

FRASER JA: The appellant is the defendant in proceedings brought by the respondent for arrears of rates. The primary judge refused one of the orders sought by the appellant in an interlocutory application, that pursuant r 222 of the *Uniform Civil Procedure Rules* the respondent produce for inspection certain documents specified in the appellant's solicitor's letter to the respondent dated 2 September 2011. That letter made a request pursuant to r 222 that the respondent produce "the original resolutions for" certain rates and charges "adopted by the plaintiff" on specified dates in June of each year between 1998 and 2010.

Rule 222 entitles a party to give written notice requiring another party "in whose pleadings... mention is made of a document" to produce the document for inspection and to permit copies of it to be made. The appellant argued that the respondent's statement of claim sufficiently mentioned a document for the purposes of r 222 in the allegation that the respondent decided

"by resolution" what rates and charges were to be levied for the relevant financial years. Particulars of the various rates were included in a schedule, which set out each relevant financial year or period and the "date that the resolution was adopted".

The primary judge refused the application, holding that r 222 could not be satisfied merely if the implication might be made that the document must exist. Her Honour concluded that the authorities, including *Lilypond Constructions Pty Ltd v Homann* [2006] 1 Qd R 411 at 414 and *Balnaves v Smith* [2008] 2 Qd R 413, made it clear that the rule applied only where there was a clear and unambiguous reference to a document and that implication or inference as to the existence of a document was insufficient.

The appellant does not seek to challenge those decisions or the primary judge's construction of r 222. Rather, the appellant's argument is that there is more than an inferred or implied allusion to a document in the respondent's statement of claim. The appellant argues that there is a direct allusion to a document in each case because the word "resolution" is used in the *City of Brisbane Act 2010* in a way which reveals that "a resolution is or includes a document" - I quote from the appellant's written submissions - and that there must be a minute or a copy of the decision. The appellant also argues that it is fanciful that a public authority such as the respondent would not hold a relevant minute or copy of each decision.

As the primary judge observed, however, the respondent's statement of claim alleges only that the respondent "did decide, by resolution, what rates and charges are to be levied...". The relevant schedule of particulars additionally refers only to the "date that the resolution was adopted". Resolutions are typically made orally or by a show of hands, although they may be recorded in documents. Of course a resolution may be made in writing, but the pleading does not refer to any writing. Plainly the pleading does not clearly and unambiguously refer to a document. As to the *City of Brisbane Act 2010*, s 96(2) provides that "[t]he council must decide, by resolution...what rates and charges are to be levied...". The definition of

"resolution" in that Act refers to a "decision". The Act does not advance the appellant's argument.

It would be unsurprising if every resolution referred to in the respondent's pleading were recorded in a document, but that is insufficient for the purposes of r 222. If any particular document recording a resolution is directly relevant to the matters in issue, the appellant might seek disclosure of a document but, as the primary judge observed, any issue about disclosure is for another day.

It is unnecessary to discuss the respondent's additional defensive argument that all of the relevant documents were in fact supplied and that the appellant in truth seeks additional documents which are not even indirectly alluded to in the pleading.

I would dismiss the appeal, with costs.

GOTTERSON JA: I agree.

DOUGLAS J: I agree.

FRASER JA: The appeal is dismissed with costs.