[2013] QCA 107

COURT OF APPEAL

MUIR JA

Appeal No 2956 of 2013
QCAT No 410 of 2012

PETER VINCENT MILLS	**First Applicant**
DAMIAN PAUL	**Second Applicant**
v	
BAREND JACOBUS KOCH	**Respondent**

BRISBANE

MONDAY, 13 MAY 2013

JUDGMENT

MUIR JA: On 28 March 2013, the respondent, Mr Koch, filed a notice of appeal purporting to appeal against a decision of the Appeal Tribunal of the Queensland Civil and Administrative Tribunal ("QCAT") dismissing an application by the respondent for leave to appeal against a decision of an adjudicator of QCAT on 26 October 2012. That decision refused to re-open an application of the respondent to QCAT on grounds that he had not established a re-opening ground. In the reasons of the Appeal Tribunal member delivered on 28 February 2013, it was held that the respondent's application was fatally flawed as s 139(5) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) ("the Act") stated that the Tribunal's decision on such an application was final and could not be "challenged, appealed against, reviewed, set aside, or called in question in another way, under the *Judicial Review Act 1991* or otherwise".

The applicants applied to strike out the appeal on a number of grounds. The first is that the appeal is defective as the applicants, who are named as the respondents to the appeal, were not parties to the QCAT proceedings. Those proceedings were commenced by Macpherson+Kelley Lawyers (Brisbane) Pty Ltd ("the Company"). The uncontradicted evidence before me is that neither applicant (Peter Vincent Mills or Damian Paul) is a director or a shareholder of the company. The first applicant swears that he was unaware of the existence of the QCAT proceedings until receiving an email from the respondent on 25 March 2013. Mr Mills swore that he had the conduct of the proceedings prior to this appeal on behalf of the company and that neither he nor Mr Paul are currently directors or shareholders of the company. It is plain that the appeal has not been properly constituted. The company is a necessary party and no basis has been shown for making the applicants parties.

The respondent wishes to relitigate the matters on which he failed at first instance or which he failed to agitate at first instance. He cannot do that. He is bound by the provisions of the Act which prescribe his rights of redress.

As claimed by the applicants, the appeal is also defective as, under s 150 of the Act, an appeal against a decision of QCAT to refuse an application for leave to appeal to QCAT may be made "(a) only on a question of law; and (b) only if the party has obtained the court's leave to appeal". No leave to appeal has been sought or obtained. The Court's leave to appeal would not be obtained as the grounds of appeal allege errors of fact as well as errors of law and there is no prospect of errors of law being made out.

In addition to the above fundamental defects, there is no ground which appears to challenge the basis for the appellate tribunal's decision, namely, that the appeal to QCAT was barred by s 139(5) of the Act. Consequently, the appeal could not succeed even if leave to appeal was to be granted.

The respondent seeks leave to join the Company as a party. For the reasons I have given, there would be no point in such a joinder. I mention also that the arguments that the

respondent would wish to advance on the hearing of the appeal have little connection with the grounds of appeal in the notice of appeal.

For these reasons I order that the appeal be dismissed with costs.