

COURT OF APPEAL

**HOLMES JA
ANN LYONS J
DALTON J**

**Appeal No 4105 of 2014
QCAT No 26 of 2012**

DAVID ASHWORTH

Applicant

v

EDWARD COSTELLO

Respondent

BRISBANE

WEDNESDAY, 25 MARCH 2015

JUDGMENT

DALTON J: In this matter, the applicant for leave to extend time to appeal acts for himself. The matter arises out of a tenancy dispute in 2011. By a judgment given 16 September 2011, QCAT terminated the applicant's lease and ordered that the respondent, who was the building manager, pay the applicant an amount of about \$2900. The respondent paid that amount because he felt he was obliged to, notwithstanding he had appealed that decision in QCAT. The appeal was successful, and on the 11th of August 2012, Senior Member Oliver made an order, the effect of which was that there was no money ever owing by the respondent to the applicant – [2012] QCATA 143.

The respondent then demanded his money back from the applicant. The applicant refused to pay. The respondent sued for monies had and received in the Magistrates Court and received judgment on a summary judgment application in the Magistrates Court on the 21st of October 2013.

In May 2014, this appeal was lodged by the applicant. It sought, first of all, time to extend time to appeal from the decision in QCAT, that is, the decision of Senior Member Oliver. And then, apparently ancillary to that, it sought leave to have this Court set aside the Magistrates Court judgment, although there was no direct appeal from the Magistrates Court judgment either in this Court (purportedly) or anywhere else.

It seems to me that the case the applicant wishes to make in this Court is without merits. The gravamen of the applicant's complaint is against the Magistrates Court judgment. There is no appeal from that. In fact, what the applicant seeks to do is attack the QCAT decision (Senior Member Oliver) which underlies the Magistrates Court judgment. That fails to appreciate, I think, that any rights that the parties have, have merged in the Magistrates Court judgment. It probably also fails to appreciate that the rights which the respondent in this Court has to the return of his money are common-law rights, not rights based on any decision in QCAT. In those circumstances, it seems to me that the appeal is without merits.

Not only that, the applicant has not prosecuted the matter in this Court. There was an outline of argument filed on the 23rd of June 2014. But despite the attempts of the registry, no further contact has been made by the applicant for leave, and he has not attended Court to prosecute his application this morning. In all those circumstances, I would dismiss the appeal in this Court or the application in this Court.

HOLMES JA: I agree.

ANN LYONS J: I agree.

HOLMES JA: The order will be that the application for an extension of time and leave to appeal is dismissed.