

COURT OF APPEAL

**MARGARET McMURDO P
GOTTERSON JA
DALTON J**

**Appeal No 8742 of 2014
QCAT No 295 of 2014**

EMMA THOMPSON

Applicant

v

**ALAIN RAUD
MARGARET TODHUNTER**

Respondents

BRISBANE

WEDNESDAY, 14 OCTOBER 2015

JUDGMENT

THE PRESIDENT: Justice Gotterson will deliver his reasons first.

GOTTERSON JA: On the 8th of July 2014, the applicant, Emma Thompson, filed an application in the Queensland Civil and Administrative Tribunal for leave to appeal against a decision made in the Tribunal on the 9th of December 2013. The decision ordered her to pay the sum of \$1613.60 to the respondents, Alan Raud and Margaret Todhunter, by the 28th of February 2014. That day, Ms Thompson also filed an application in QCAT for extension of time for making the leave application. Directions were made in the applications on the 18th of July 2014. Direction 2 required that the applicant file in the Tribunal and give to the

respondents a copy of all written submissions in support of the application to extend time or advise that no further material would be filed by 4 pm on the 1st of August 2014.

Direction 4 provided that if the applicant failed to comply with direction 2 by the required date her application for leave to appeal would be dismissed without further order. Ms Thompson failed to comply with direction 2. On the 8th of August 2014, Senior Member Stilgoe made an order confirming direction 4 with effect that the application for an extension of time to file the application for leave to appeal was dismissed. The Senior Member gave reasons for the decision on – pardon me – on the 7th of October 2014. On the 17th of September 2014, Ms Thompson filed an application in this Court for an extension of time in which to appeal against the order made on the 8th of August 2014. The application is supported by her affidavit, to which is exhibited a proposed notice of appeal.

I would observe that the application is properly understood as one for an extension of time in which to apply for leave to appeal to this Court. On this occasion, Senior Member Stilgoe constituted an Appeal Tribunal of QCAT. Section 150 of the *Queensland Civil and Administrative Tribunal Act* of 2009 defines those decisions of an Appeal Tribunal which may be appealed to this Court. Such appeals may only be on a question of law and with this Court's leave. There are two subsections to section 150 which provide for appeals. Section 150(1) applies to Appeal Tribunal decisions which refuse an application for leave to appeal to the Appeal Tribunal. The decision of the 8th of August 2014 is not such a decision. It confirmed that an application for extension of time, not an application for leave to appeal, was refused.

Next, section 150(2) applies to two types of Appeal Tribunal decisions. The first is a cost amount decision. The decision of the 8th of August 2014 is not a cost amount decision as defined. The other type of decision is a final decision. The term "final decision" is defined in schedule 3 to the QCAT Act. Relevantly, a final decision means a decision that finally decides the matters the subject of the proceeding. The decision of the 8th of August 2014 is not a final decision as defined. It did not finally decide any matter between the applicant and the respondents. It did no more than refuse an extension of time for filing an application for leave

to appeal. Since the decision sought to be appealed does not fall within either subsection (1) or subsection (2) of section 150, it cannot be appealed to this Court. There is good reason, therefore, to refuse the application for an extension of time sought.

I would propose – I would add that the respondents, who are self-represented, have indicated that they have incurred some legal costs in preparing their material to respond to this application. It is appropriate that there be a costs order in their favour. I would propose the following orders:

1. The application for an extension of time to appeal is refused.
2. The applicant pay the respondents' costs of the application on the standard basis.

DALTON J: I agree with the orders proposed by Justice Gotterson and I agree with the reasons he has given for them. In particular, I agree this Court has no jurisdiction to entertain the application which Ms Thompson makes to it. However, because this matter has become so protracted and because there are still outstanding disputes between the parties in QCAT (or the potential for them) and because Ms Thompson insists she has a meritorious claim, I will give some further reasons to the effect that even if this Court had jurisdiction to entertain Ms Thompson's application, I would refuse it because it is not demonstrated that she has any meritorious claim to explore.

This matter began when Ms Thompson obtained an order of the Small Claims Tribunal on the 20th of August 2009. That order was to the effect that once Ms Thompson had arranged for a fence to be constructed in accordance with a quotation dated 13 April 2009, and when that fence had been constructed within three months of the order, the respondents in this Court were to pay Ms Thompson \$1,400. There was no construction of the fence within three months. There was no construction of the fence in accordance with the quotation which supported the Small Claims order. Notwithstanding this, Ms Thompson managed to register the Small Claims order in the Magistrates Court and then began enforcement proceedings against the respondents in this Court. They paid an amount after that was done, not because they thought they owed the amount, but because they did not wish to breach the law.

On the 25th of July 2013, there was a decision in QCAT by Member Daveren. His decision was that the Small Claim ought never have been registered in the Magistrates Court and he made an order relieving the respondents from payment in accordance with the order that had been registered in the Magistrates Court. As to the merits, he said on the evidence before him:

“The fence was not completed, no payments [to the fencer] were made.”

In this Court, from the bar table, Ms Thompson says that the fence is completed and relies upon a photograph as evidence of this. I am not prepared to accept those statements and I am not prepared to accept the photograph as evidence of completion. In this Court, Ms Thompson told us from the bar table that she had paid for the materials for the fence. Again, without evidence, I am not prepared to accept that. Significantly, Ms Thompson admitted in this Court that she has never paid for the labour cost of the fence to be completed. In those respects then, the merits of her claim are unchanged from the time Member Daveren made his decision.

On the 9th of December 2013, the respondents obtained an order from QCAT that Ms Thompson repay them the amount which they had paid in respect of the fence, because they thought they were obliged to comply with the Magistrates Court enforcement proceedings. On the 24th of December 2013, Ms Thompson made an application to QCAT to, essentially, re-agitate both the matters decided by Member Daveren, and the decision of QCAT ordering that she repay the respondents the amount which they had paid upon becoming aware of the Magistrates Court enforcement proceedings. On the 26th of February 2014, that application to reopen was refused.

On the 8th of July 2014, Ms Thompson applied to QCAT to extend time to seek leave to appeal from that refusal. That application is what was rejected by Senior Member Stilgoe, as explained by Justice Gotterson, and it is that dismissal by Senior Member Stilgoe that was sought to be re-agitated in this Court. As I say, even if this Court had jurisdiction to hear the application sought to be agitated by Ms Thompson, I would refuse it in circumstances where there is nothing in the material still to show that the fence has been completed or that Ms Thompson has paid the amount she seeks to claim by way of refund or recovery from the respondents.

THE PRESIDENT: I agree with Justice Gotterson that this Court has no jurisdiction to hear the application for an extension of time to apply for leave to appeal and with the orders he proposes. As this Court has no jurisdiction, I do not wish to say anything conclusive about the merits of Ms Thompson's claim, but Justice Dalton's observations identify the apparently fatal difficulties that she faces. The order is:

The application for an extension of time to apply for leave to appeal is refused with costs.

Adjourn the Court.