SUPREME COURT OF QUEENSLAND

CITATION:	*Monte Carlo Caravan Park P/L v Curyer & Curyer* [2006] QCA 363
PARTIES:	**MONTE CARLO CARAVAN PARK PTY LTD** ACN 054 981 252 (appellant/applicant) **v** **HEDLEY CURYER** **JUNE CURYER** (respondents/respondents)
FILE NO/S:	Appeal No 4793 of 2006 DC No 891 of 2006
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	22 September 2006
DELIVERED AT:	Brisbane
HEARING DATE:	7 September 2006
JUDGES:	Jerrard, Keane and Holmes JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Application for leave to appeal dismissed** **2. Applicant to pay the respondents' costs to be assessed on the standard basis**
CATCHWORDS:	STATUTES - ACTS OF PARLIAMENT - INTERPRETATION - *Manufactured Homes (Residential Parks) Act 2003* (Qld) - respondents reside at applicant's caravan park - respondents' premises comprises section which was originally a caravan and other sections including annexe and deck - large structural openings made in wall of what was the caravan - respondents sought and obtained order from Commercial and Consumer Tribunal that the Tribunal had jurisdiction to determine a claim under *Manufactured Homes (Residential Parks) Act* - District Court judge dismissed appeal from Tribunal's decision - meaning of "caravan" - meaning of "manufactured home" - meaning of "site agreement dispute" - whether leave should be granted

District Court of Queensland Act 1967 (Qld), s 118(3)
Manufactured Homes (Residential Parks) Act 2003 (Qld), s 8, s 11, s 14, s 140
Residential Tenancies Act 1994 (Qld), s 3A

Allders International Pty Ltd v Commissioner of State Revenue (Vic) (1996) 186 CLR 630, cited
Cotton v Holcombe (1986) 162 CLR 1, cited
Pugin v WorkCover Queensland [2005] QCA 66; [2005] 2 Qd R 37, cited
Rayner v Whiting [1999] QCA 214; [2000] 2 Qd R 552, cited

COUNSEL: P J Flanagan SC, with P W Hackett, for the applicant
A J H Morris QC, with G D Bassett, for the respondents

SOLICITORS: Official Solicitor to the Public Trustee of Queensland for the applicant
Tenants' Union of Queensland for the respondents

[1] **JERRARD JA:** In this application I have read the reasons for judgment and orders proposed by Keane JA, and respectfully agree with those. I add only that the senior counsel for the respondents argued the existing agreement between the respondents and the applicant satisfied the definition of a "site agreement" in s 14 of the *Manufactured Homes (Residential Parks) Act 2003* (Qld), even though it was entered into before that Act came into force, and even though it was not expressly described as an agreement relating to a "manufactured home". That argument may be correct, and I agree with Keane JA that leave should not now be granted to the applicant to broaden its challenge to the Tribunal's jurisdiction.

[2] **KEANE JA:** The applicant seeks leave, pursuant to s 118(3) of the *District Court of Queensland Act 1967* (Qld), to appeal against the decision of the District Court, on appeal from the Commercial and Consumer Tribunal ("the Tribunal"), that the Tribunal had jurisdiction to determine a claim by the respondents under the *Manufactured Homes (Residential Parks) Act 2003* (Qld) ("the MHRP Act").

[3] The respondents reside at premises at the Monte Carlo Caravan Park at Murarrie. The respondents sought an order from the Tribunal that the applicant enter into a site agreement with them in relation to the structure in which they live.[1] Upon the hearing of the application in this Court, it was suggested by senior counsel for the respondents that the respondents' application was more accurately described as an application for a written site agreement in conformity with the requirements of the MHRP Act.

[4] The applicant had contended, both before the Tribunal, and on appeal to the District Court, that the respondents' premises were not a "manufactured home" within the meaning of the MHRP Act so that, therefore, the Tribunal had no jurisdiction in respect of the respondents' claim. This contention was unsuccessful.

[5] In this Court, the pressure of argument focussed attention more closely on the point that the Tribunal's jurisdiction is in respect of "site agreement dispute[s]".[2] I shall

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1 The term "site agreement" is defined in s 14 of the MHRP Act. See also pt 5 of the MHRP Act.
2 See s 140 of the MHRP Act.

return to this point after first addressing the issue in respect of which the application for leave to appeal was originally made.

A manufactured home?

[6] It is well established that an application for leave to appeal under s 118(3) of the *District Court of Queensland Act* will not usually be granted unless the decision from which it is sought to appeal is attended with sufficient doubt to warrant its being reconsidered, and that it is the cause of some substantial injustice to the party adversely affected by it.[3]

[7] The premises in which the respondents have lived for many years comprise a section which was originally a caravan and other sections which include an annexe and a deck. The annexe is attached to the side of the caravan. It is of about the same floor area as the caravan. The annexe is tied down by chains to stakes in the ground. The evidence before the Tribunal was to the effect that "large structural openings" had been made in the "north wall" of what was the caravan, so that "the removal of the [annexe] would … render this caravan non structural for towing …".[4]

[8] The Tribunal found as a fact that the annexe and deck have been integrated into one structure.[5] It held that this structure does not answer the definition of a caravan in the MHRP Act.[6] On appeal to the District Court, the decision of the Tribunal was upheld.

[9] The applicant submitted in this Court that the Tribunal and the District Court erred in law in failing to conclude that the respondents' home is "a caravan" within the meaning of the MHRP Act.

[10] By virtue of the statutory definition of "manufactured home" in s 10(a) of the MHRP Act, a caravan cannot be a "manufactured home" for the purposes of the regime established by that legislation. The applicant pointed to the definition of caravan in s 3A(1)(c) of the *Residential Tenancies Act 1994* (Qld) ("the RTA") which provides that "a caravan is a trailer … that, as originally designed, was capable of being registered under a law of the State about the use of vehicles on public roads".

[11] The applicant submitted that "[t]he error of law at the heart of the appeal is whether the relevant home structure properly fell within the definition of a 'manufactured home' under the MHRP [Act] or a 'caravan' under the [RTA]". The applicant urged the proposition "once a caravan always a caravan irrespective of the modifications" to it. The applicant emphasised that the caravan which has been incorporated into the structure was, as originally designed, a trailer capable of being registered as a caravan. For that reason, so the applicant argues, the respondents' home cannot be regarded as a manufactured home.

[12] It is important that the question which the applicant seeks to agitate before this Court is considered in its factual context rather than in the abstract. The dispute

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3 *Rayner v Whiting* [2000] 2 Qd R 552 at 553; *Pugin v WorkCover Queensland* [2005] QCA 66 at [15]; [2005] 2 QdR 37 at 40.

4 See *Curyer, H & J v Monte Carlo Caravan Park Pty Ltd*, [2006] QCCTMH 3 at [13].

5 See *Curyer, H & J v Monte Carlo Caravan Park Pty Ltd*, [2006] QCCTMH 3.

6 In defining "caravan", sch 2 to the MHRP Act refers to s 3A of the *Residential Tenancies Act 1994* (Qld).

between the parties has arisen because of the respondents' assertion that they are entitled to the provision of a site agreement in respect of their home. It is in the context of this dispute that one must address the question whether the structure in which the respondents live, and in respect of which they assert their claim for a site agreement, is a "manufactured home", that is to say, "a structure other than a caravan" and which has the other characteristics required by s 10 of the MHRP Act. Those other characteristics are not presently in controversy. The question, therefore, is whether "the structure" in which the respondents dwell is a "caravan" under s 3A of the RTA.

[13] Crucial to the argument which the applicant sought to advance is the contention that the learned District Court judge erred in having regard to the evidence of the structural changes to the caravan. The applicant stressed that the structure was originally designed as a caravan. The applicant argued that the answer to the question whether a trailer is a caravan is to be determined by reference to its original design, and that the answer to this question cannot be affected by "subjective assessments" of the effect of modifications to a caravan. But the question, having regard to the facts of this case, is not about the proper description of one element of the structure in respect of which the respondents seek a site agreement. It is about the proper description of the structure.

[14] The MHRP Act does not invite a notional dismantling of the structure in question, nor does it require some form of historical inquiry into the provenance of the components of the structure. The inconvenience of either approach is obvious, but it is not necessary to have resort to arguments from inconvenience. It is clear from the language of the statute that the MHRP Act operates by reference to the structure **as it exists on site** when the effect of the legislation falls to be considered.

[15] The applicant's argument fails to surmount the obstacle that both the Tribunal and the District Court proceeded on the basis that, as a matter of fact, the respondents' home was found to be one integrated residential structure. There was nothing "subjective" about this finding of fact. It was an objective appraisal of the construction and function of the structure. Considered as one structure, the respondents' home does not meet the definition of a "caravan" within the meaning of the MHRP Act. As the learned District Court judge held, the structure "is no longer a trailer at all because of what has happened to it … Functionally, it has become one structure …". This finding of fact is fatal to the applicant's argument.

[16] There being no basis for a challenge to the finding of fact which forms the basis of the decisions below, there is no prospect that an appeal will succeed.

The broader jurisdictional dispute

[17] As was mentioned earlier, in the course of argument in this Court, attention was focused upon the circumstance that, under s 140 of the MHRP Act, jurisdiction was conferred upon the Tribunal in respect of "site agreement dispute[s]". The term "site agreement dispute" is defined in sch 2 of the MHRP Act to mean "a dispute between the parties to a site agreement about the parties' rights and obligations under the agreement or this Act". It would appear, therefore, that the Tribunal's jurisdiction is confined to disputes between persons who are actually parties to an existing site agreement.

[18] Senior counsel for the applicant raised for the first time in oral argument before this Court the contention that the MHRP Act did not confer jurisdiction upon the Tribunal to entertain a claim by a home owner[7] to a park owner[8] that a site agreement be granted by the park owner or made between the parties. On the footing that the respondents' claim before the Tribunal was that a site agreement be entered into (and thus, necessarily, that there was no site agreement about which there could be a "site agreement dispute"), it was contended that the Tribunal should have decided that it had no jurisdiction to entertain the dispute between the parties.

[19] Senior counsel for the applicant argued that this question was one of law which raised no disadvantage to the respondents in terms of procedural fairness,[9] and so should be determined by this Court especially bearing in mind that, if the Tribunal had no jurisdiction to entertain the dispute between the parties, then jurisdiction could not be conferred on the Tribunal by agreement, estoppel or waiver.

[20] Senior counsel for the respondents argued that the parties had entered into a site agreement on 14 January 2004 in the sense that they had entered into an agreement relating to the respondents' occupation of the site of their home. Because that agreement was not appropriate for the purposes of the MHRP Act, the respondents had called upon the applicant to provide a written agreement in conformity with s 25 of the MHRP. It was emphasised on behalf of the respondents that, in their statement of claim in the Tribunal, the respondents had relied upon this agreement, and that the applicant had not sought to put in issue whether this agreement was a site agreement sufficient to found a site agreement dispute.

[21] The position taken by the applicant is certainly arguable, but, on the other hand, it is not clear that the Tribunal lacked jurisdiction over the dispute for the reasons now sought to be agitated by the applicant. It is to be emphasised that the proceeding before this Court is an application for leave to appeal. Given that the applicant did not seek to agitate this broader question at any stage prior to the oral argument in this Court; and, given that it is arguable that the Tribunal had jurisdiction notwithstanding the point now sought to be raised, this Court should not, in my respectful opinion, be disposed, as a matter of discretion, to grant leave to the applicant to agitate this broader jurisdictional point on appeal.

Conclusion and orders

[22] Accordingly, in my respectful opinion, the application for leave to appeal should be dismissed and the applicant should pay the respondents' costs to be assessed on the standard basis.

[23] **HOLMES JA:** I agree with what has been said by Jerrard and Keane JJA. Leave to appeal should be refused.

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7 The term "home owner" is defined in s 8 of the MHRP Act.

8 The term "park owner" is defined in s 11 of the MHRP Act.

9 *Coulton v Holcombe* (1986) 162 CLR 1 at 7 - 9; *Allders International Pty Ltd v Commissioner of State Revenue (Vict)* (1996) 186 CLR 630 at 666.