

# SUPREME COURT OF QUEENSLAND

CITATION: *Dart v Singer; Hajridin v Singer* [2013] QCA 255

PARTIES: **In Appeal No 40 of 2013:**  
**DART, Frederick William**  
(applicant)  
v  
**SINGER, Clifford**  
(respondent)

**In Appeal No 41 of 2013:**  
**HAJRIDIN, Megan Ann**  
(applicant)  
v  
**SINGER, Clifford**  
(respondent)

FILE NOS: CA No 40 of 2013  
CA No 41 of 2013  
DC No 645 of 2011  
DC No 646 of 2011

DIVISION: Court of Appeal

PROCEEDING: Applications for Extension of Time s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 10 September 2013

DELIVERED AT: Brisbane

HEARING DATE: 21 August 2013

JUDGES: Margaret McMurdo P and Gotterson JA and Margaret Wilson J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the orders made

ORDERS: **In each appeal:**

- 1. Application for an extension of time granted and time extended to 28 February 2013.**
- 2. Application for leave to appeal granted but limited to the questions set out in [16] of these reasons.**
- 3. The costs of this application and of the proceedings below are reserved.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN GRANTED – where each applicant was convicted and sentenced in the Magistrates

Court for a number of offences against the *Animal Care and Protection Act 2001 (Qld)* ("the Act"), including contravening a prohibition order under s 187 of the Act – where each applicant appealed unsuccessfully against their convictions to the District Court – where the applicants filed their applications for leave to appeal to this Court out of time – where the delay was not extensive – where the applicants explained the delay on the basis of a miscalculation of the filing date – where the applicants contend the magistrate erred in misconstruing the prohibition order of 12 December 2008, that it had only prospective effect and that the respondent did not prove that the applicants were not already in possession of the relevant animals at the time the prohibition order was made – where the matter was not argued before or addressed by the District Court judge – whether there was an adequate explanation for the delay – whether the interests of justice warrant the grant of the extension of time and leave to appeal

*Animal Care and Protection Act 2001 (Qld)*, s 17(2),  
s 149(2), s 187, Ch 6 Pt 2 Div 3  
*District Court of Queensland Act 1967 (Qld)*, s 118(3),  
s 118(6)  
*Justices Act 1886 (Qld)*, s 222

*Bunning v Cross* (1978) 141 CLR 54; [1978] HCA 22,  
discussed

*Dart v Singer; Hajridin v Singer*, unreported, District Court,  
Qld, DC Nos 645 and 646 of 2011, 21 December 2012,  
related

*Singer v F W Dart; Singer v S Dart; Singer v Hajridin* [2011]  
QMC 37, related

COUNSEL: In Appeal No 40 of 2013:

The applicant appeared on his own behalf  
J R Hunter QC for the respondent

In Appeal No 41 of 2013:

The applicant appeared on her own behalf with F W Dart  
assisting  
J R Hunter QC for the respondent

SOLICITORS: In Appeal No 40 of 2013:

The applicant appeared on his own behalf  
Roberts Nehmer McKee for the respondent

In Appeal No 41 of 2013:

The applicant appeared on her own behalf with F W Dart  
assisting  
Roberts Nehmer McKee for the respondent

- [1] **MARGARET McMURDO P:** The applicants, Frederick Dart and Megan Hajridin, were convicted of offences against the *Animal Care and Protection Act 2001 (Qld)* ("the Act") on 7 November 2011 after a trial in the Townsville Magistrates Court extending over seven days between January and April 2011. Mr Dart was convicted of one offence of contravening a prohibition order under s 187 of the Act, five offences of breach of a duty of care under s 17(2) of the Act and one offence of possession of a seized animal in contravention of s 149(2) of the Act. Ms Hajridin was convicted of four offences of contravening a prohibition order under s 187 of the Act, five offences of breach of duty of care under s 17(2) of the Act and one count of possession of a seized animal in contravention of s 149(2) of the Act.
- [2] On 1 December 2011, Mr Dart was fined \$2,000 for the offence of possession of a seized animal which was referred to the State Penalties Enforcement Registry (SPER). On all other offences, he was sentenced to three years probation. He was ordered to pay court costs of \$187.50. Ms Hajridin was sentenced on each offence of contravening the prohibition order to three months imprisonment suspended after one month with an operational period of 12 months. On each offence of breach of duty of care, she was placed on three years probation. On the offence of possessing a seized animal, she was fined \$2,000 which was referred to SPER. She was prohibited from purchasing, otherwise acquiring or taking possession of any animal for trade or commerce other than desexed companion animals permitted by any local government local law for a period of five years. She was also ordered to pay compensation of \$200 and court costs of \$337.50. All the animals seized, together with any other animals presently registered or in the possession of the appellants not being companion animals as permitted by any local government local law, and the two pet carrying cases, were forfeited to the Royal Society for the Prevention of Cruelty to Animals (RSPCA). Each applicant was ordered to pay the RSPCA's costs of seizure and accommodation totalling \$80,481.20 under s 189 of the Act.
- [3] Each applicant appealed against their conviction and sentence to the District Court under s 222 *Justices Act 1886 (Qld)*. Ms Hajridin was granted bail pending appeal. The appeals were heard in late July 2012. On 21 December 2012, Mr Dart's appeal against convictions was dismissed as was his appeal against sentence. Ms Hajridin's appeal against convictions was also dismissed but her appeal against sentence was allowed in part. The sentence ordering that she serve three months imprisonment suspended after serving one month was varied so that it was wholly suspended. Her sentences were otherwise confirmed.
- [4] The applicants attempted to file an application for leave to appeal against conviction and sentence in early February 2013, about two weeks out of time. They filed their present applications for an extension of time in late February 2013. The delay, therefore, was not extensive. They already have had, however, the benefit of a trial and an appeal. In those circumstances, an extension of time to bring an application for leave to appeal under s 118(3) *District Court of Queensland Act 1967 (Qld)* will be granted only where an applicant has provided adequate explanation for the delay, has demonstrated some apparent error below, and that the interests of justice warrant its correction by this Court. If the applications for leave to appeal have no real prospect of success, to grant the extension of time would amount to an unjustifiable waste of public resources.
- [5] The applicants were self-represented for the first two days of the Magistrates Court hearing. Mr Dart was also self-represented at the District Court appeal. They were

both self-represented in the hearing in this Court and, at the request of both applicants, the Court gave leave for Mr Dart to also make submissions on behalf of Ms Hajridin.

[6] In their applications to this Court, the applicants' grounds are in identical terms:

- "1. The Honourable Judge erred in law when he upheld the erroneous determination, made by Her Honour Magistrate K Ryan, in the Court below, that the appellants had not been denied procedural fairness and procedural rights at a purported trial for simple (summary) offences commencing 24 January 2011, before Her Honour, where Her Honour lapsed into fundamental procedural error and error of Law, denying Her Honour jurisdiction to conduct a trial, make decisions and, deliver judgements.
2. The Honourable Judge was misled when he considered and relied upon an incorrect Magistrates Court Verdict and Judgement record thus causing his Honour to make errors of law.
3. The Honourable Judge erred in law when he considered a relevant fact of which he was aware, but failed to properly consider and interpret crucial elements of, a prohibition order handed down on 12 December 2008.
4. The Honourable Judge erred in law when he misled himself and considered an erroneous fact in relation to internet negotiations for the sale of a pup.
5. The Honourable Judge erred and made errors of law by upholding the erroneous determination by Her Honour Magistrate K Ryan that written complaints [against them] ... were not defective, regardless of the fact that they did not provide particulars, or sufficient particulars, to enable an understanding of overt acts alleged to have been committed or, particulars or sufficient particulars to clearly define the issues before the court and for the defendants to prepare defences and, were otherwise defective in substance
6. The Honourable Judge erred in law when he upheld the erroneous determination by Her Honour Magistrate K Ryan that the witness, Dr Lomax, was qualified and acceptable as an Independent expert witness not least on the grounds of an apprehension of bias, and further erred when he failed to rule that evidence purportedly given by Lomax as an expert, was inadmissible.
7. The Honourable Judge also erred and made errors of law by upholding the evidence of Lomax as admissible in relation to Victorian codes of practice for the keeping of laboratory rats and mice, which the Learned Magistrate in the court below relied upon to convict the appellants.

8. The Honourable Judge erred in law by accepting as fact, that a dog identified by its microchip was a dog that had been seized in earlier proceedings.
9. The Honourable Judge erred in law by upholding the decision of the Learned Magistrate when he misdirected himself that prosecution had proved the elements of the charge in relation to a dog allegedly found in possession of the appellants, contrary to Section 149(2)(d), thus placing the onus of proof of having a 'reasonable excuse' for the possession of the dog upon the appellants and such evidence of said reasonable excuse having been rejected by the Learned Magistrate on grounds of credibility of one of the witnesses.
10. The Honourable Judge erred in law by upholding the decision of the Learned Magistrate and declaring evidence as admissible, having been gained with the aid of an invalid warrant.
11. The Honourable Judge erred in law by upholding that the decision of the Learned Magistrate was open to findings of fact and credibility in relation to the proof of elements of the offences when he considered irrelevant facts and failed to consider relevant facts.
12. The Honourable Judge erred in law when deliberating on sentence when he considered irrelevant facts and failed to consider relevant facts, namely:
  - (i) considering as relevant the short period of time after the Order made until the alleged re-offending occurred.
  - (ii) the relevant fact that an order made on 12 December 2008 was silent as to animals that were in the appellants' possession at the time the order was made.
  - (iii) the relevant fact that the Magistrate in the court below **did** consider whether animals may remain in the appellants' possession after the making of her order, and made a disposal order in relation to 'animals presently registered to or in the possession, not being companion animals permitted by any local government local law'.
  - (iv) the relevant fact that, having made the order that the Magistrate's court did in relation to animals that remained in the appellants' possession, it was a tacit acknowledgement of the untenable position the appellants found themselves in, when the order was made on 12 December 2008 that was silent in relation to animals that remained in the appellants' possession at that time.

- (v) considering 'comparative' cases that related to animal cruelty when 'Duty of care' offences and a 'Breach of prohibition' is not an animal cruelty offence.
- (vi) considering submissions by counsel for the respondent that the quantum of costs was a direct result of the appellants delay in having the charges heard and determined; His Honour failed to consider the relevant fact that at least some of the delays could be reasonably attributed to the respondent."

[7] A useful starting point in determining whether the applicants have demonstrated that their applications should be granted is a consideration of the proceeding below. Ms Hajridin's counsel refined the grounds of appeal in the District Court appeal<sup>1</sup> and Mr Dart was given leave to amend his grounds of appeal to similar effect.<sup>2</sup> His Honour summarised the issues in the appeal before him as follows:<sup>3</sup>

***"Ms MA Hajridin***

1. Error of law - no proof of prohibition order
2. Error of law - invalid search warrant and special warrant
3. Misdirection as to application of statutory powers
4. Possession of seized animal – unsafe and unsatisfactory ground
5. Sentence manifestly excessive and order for costs excessive and oppressive

***Mr FW Dart***

- (a) Failure to arraign
- (b) Defective complaints, invalidity and lack of particulars
- (c) Independence of veterinary expert
- (d) Whether elements of offences were proved beyond reasonable doubt
- (e) Jurisdictional error and mistake of law regarding the authority of inspectors.
- (f) Sufficiency of evidence, including unlawful possession of animals and 'reasonable excuse'.
- (g) Effect of inter-parties 'agreements'
- (h) Errors in findings of fact.
- (i) Non-identification of individual animals."

<sup>1</sup> *Dart v Singer; Hajridin v Singer*, unreported, District Court, Qld, DC Nos 645 and 646 of 2011, 21 December 2012, [21].

<sup>2</sup> Above, [23].

<sup>3</sup> Above, [27].

- [8] In a careful judgment of 51 pages, his Honour dealt with and rejected each of those contentions, save for Ms Hajridin's complaint as to her sentence, upon which she was partially successful.<sup>4</sup> In their written and oral submissions to this Court, the applicants have not demonstrated any error in the primary judge's reasons warranting the granting of leave to appeal.
- [9] They do, however, raise one matter not considered by the primary judge which may have substance. The magistrate found that the search warrants relied on by the respondent were deficient but exercised her discretion pursuant to the principles outlined in *Bunning v Cross*<sup>5</sup> to find that the evidence the subject of the offences of contravening a prohibition order was admissible. She also held that evidence about the alleged offences of breach of duty of care obtained by RSPCA officers after they had entered the property was admissible by way of Ch 6 pt 2 div 3 (Powers for entry to all places) of the Act.<sup>6</sup> The magistrate noted the respondent's concession that, until the decision of the court of 12 December 2008 making the prohibition order in respect of each applicant, neither applicant was constrained from "purchasing or otherwise acquiring or taking possession of any dog or rat for trade or commerce".<sup>7</sup> Her Honour continued:

"[89] ... However, following the making of the order, these defendants were at immediate risk of breaching the order, should they continue to possess any dog or rat for trade or commerce.

[90] The [applicants] argue that 'possession' as stated in the prohibition order should be interpreted other than as contained in the dictionary of the *Animal Care and Protection Act 2001*. That definition states that 'possession includes control and custody'. This is an inclusive definition. In those circumstances, the ordinary meaning of 'possession' should be used. The Australian Concise Oxford Dictionary meaning of 'possession' is 'actual holding or occupancy; visible power of exercising such control as attaches to (but may exist apart from) lawful ownership'.

[91] I have already found that the purported transfer of the business *Topdogzdownunder* and the purported transfer of ownership of the animals previously owned by Megan Ann Hajridin and Frederick William Dart to Sydney Dart were shams. Added to this the fact that Megan Ann Hajridin was the person left in charge of, and in Sydney Dart's clear evidence, she was in possession of the animals and the animals resided in the same building as Ms Hajridin and Mr Frederick William Dart, I am satisfied that Megan Ann Hajridin and Frederick William Dart had possession of the animals."<sup>8</sup>

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<sup>4</sup> Above, [208]-[213], [221].

<sup>5</sup> (1978) 141 CLR 54.

<sup>6</sup> *Singer v F W Dart*; *Singer v S Dart*; *Singer v Hajridin* [2011] QMC 37, [65]-[66].

<sup>7</sup> Above, [89].

<sup>8</sup> Above, [89]-[91].

- [10] The magistrate's ruling at [89] of her reasons appears to be inconsistent with the prohibition order made against each applicant on 12 December 2008 which was in these terms:

"I order that each of the defendants, Frederick DART and Megan HAJRIDIN having been convicted of an animal welfare offence must not purchase or otherwise acquire or take possession of any dog or rat for trade or commerce, for a period of two years from this date."<sup>9</sup>

- [11] Consistent with the terms of the prohibition order, the applicants contend that it had only a prospective effect. If they were in possession of the dogs or rats the subject of the present charges prior to the issue of the prohibition order, they were not in breach of it. They contend that when the respondent closed its case before the magistrate, he did not prove that, when the prohibition order was issued on 12 December 2008, they were not already in possession of the dogs or rats. They contend that the respondent gave evidence that he did not and could not know whether the dogs and rats were in the applicants' possession prior to 12 December 2008. Although the applicants did not place the relevant portions of the transcript before this Court, since the hearing I have checked the transcript and note that this last submission is accurate and consistent with the respondent's evidence before the magistrate.<sup>10</sup>
- [12] The applicants' submissions on this point appear to be generally supported by the ordinary meaning of the terms of the prohibition order. Counsel for the respondent frankly concedes as much but emphasises that he has not had the opportunity to research the matter or to analyse the transcript of evidence as it was ultimately not a matter relied on before the District Court judge and the transcript of the Magistrates Court hearing was not before this Court. He contends the applicants should not be allowed to raise it for the first time in their applications to this Court.
- [13] The point they now raise is, however, a matter of law. The respondent's counsel concedes that, as the point was raised before the magistrate after the respondent closed its case, no prejudice could flow to the respondent if this Court now considered it. If we declined to do so, the magistrate's ruling that a prohibition order in the terms imposed on 12 December 2008 placed those subject to it "at immediate risk of breaching the order, should they continue to possess any [animal] for trade or commerce", could be wrongly used as a precedent. The magistrate's decision could be given undue weight because of the District Court judge's decision dismissing the appeals against conviction.
- [14] The applicants, who are no strangers to litigation in this Court, have not given an entirely satisfactory explanation for their delay in bringing their applications for leave to appeal. They have not demonstrated any merit in most of the points they proposed to agitate in their prospective appeals. They have, however, raised one point of potential merit warranting the grant of leave to appeal, namely, whether the magistrate erred in finding they "were at immediate risk of breaching the order, [made on 12 December 2008 if] they continue[d] to possess any dog or rat for trade or commerce" and whether they were wrongly convicted on the offences of breach of a prohibition order.

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<sup>9</sup> *Dart v Singer; Hajridin v Singer*, unreported, District Court, Qld, DC Nos 645 and 646 of 2011, 21 December 2012, [29].

<sup>10</sup> Magistrates Court hearing (25.01.2011) T2-81.

- [15] The applicants contend that if this error of law were established, it would also throw doubt on their convictions for the remaining offences as the search warrants were issued only in respect of the alleged contravention of the prohibition orders. That submission cannot be accepted in light of the magistrate's reasons at [65] to [67], summarised at [9] of these reasons.
- [16] Under s 118(6) *District Court of Queensland Act*, this Court may grant leave on the conditions it considers appropriate. I consider the applicants should be granted an extension of time for leave to appeal from the District Court judge's order against their convictions and sentence imposed in the Magistrates Court on 7 November 2011, limited to the following questions:
- whether the applicants contravened the prohibition order of 12 December 2008 if the respondent failed to establish that they did not purchase or otherwise acquire or take possession of any dog or rat for trade or commerce prior to the date of the prohibition order; and
  - if so, whether their convictions for the offences of contravening the prohibition order should be quashed and verdicts of acquittal entered; and
  - if so, whether their sentences for their remaining convictions should be varied.
- [17] Although the applicants have been partially successful in this application, the point on which they have succeeded is not one which was clearly raised in the District Court appeal. For that reason, I would reserve the question of the costs of this application and the proceedings below so that it can be canvassed at the hearing of the appeal.

ORDERS:

1. Application for an extension of time granted and time extended to 28 February 2013.
  2. Application for leave to appeal granted but limited to the questions set out in [16] of these reasons.
  3. The costs of this application and of the proceedings below are reserved.
- [18] **GOTTERSON JA:** I agree with the orders proposed by McMurdo P and with the reasons given by her Honour.
- [19] **MARGARET WILSON J:** I agree with the orders proposed by the President and with her Honour's reasons for judgment.