

COURT OF APPEAL

**HOLMES JA
GOTTERSON JA
MORRISON JA**

**Appeal No 408 of 2014
QCATA No 344 of 2013**

SOL THEO

Applicant

v

ADRIAN BIRRER

First Respondent

MARKETTA BIRRER

Second Respondent

ROBERT WOCKNER

Third Respondent

THURSDAY, 20 NOVEMBER 2014

HOLMES JA: The applicant seeks leave to appeal a decision of the Appeal Tribunal of the Queensland Civil and Administrative Tribunal which dismissed his application for leave to appeal from an adjudicator's decision. The adjudication concerned the disposition of a rental bond in the amount of \$2,400 paid by the respondents as the applicant's tenants. The adjudicator had decided that the applicant was entitled to receive \$1,750 consisting of two weeks rent, the cost of a broken window, pest control and minor repairs, while the tenants were entitled to the balance of the bond of \$650.

The applicant was, pursuant to s 142(3) of the *Queensland Civil and Administrative Tribunal Act* 2009, entitled to appeal that decision, as a decision in a proceeding from a minor civil dispute, and as concerning questions of fact, only with the Appeal Tribunal's leave. The Appeal Tribunal reviewed the adjudicator's decision and recorded the basis on which he

allowed or disallowed each claim. The Appeal Tribunal member concluded that review by saying:

“It is impossible to identify any legal error and the findings of fact and weight are uniformly reasonable, and entirely within the providence of the Adjudicator.”

He went on to observe that an application for leave to appeal was not an opportunity for a retrial and there was no appellable error in preferring one version of facts to another. He dismissed the application for leave to appeal as “devoid of merit”.

Section 150 of the *Queensland Civil and Administrative Tribunal Act* permits an appeal to this Court against a decision of the Appeal Tribunal to refuse an application for leave to appeal to it only on a question of law and only with leave; the question of leave usually being considered by reference to whether there is a substantial injustice to be corrected. The applicant’s proposed grounds of appeal complain, in essence, of both the adjudicator’s and the Appeal Tribunal member’s failure to accept as accurate the applicant’s rental ledger and what is said to be evidence about water rates and condition reports and a failure to be “even-handed” in connection with the applicant’s claim for painting, repairs and labour.

Pressed here to point to the errors of the Appeal Tribunal which would constitute errors of law, the applicant said that he did not appreciate he had to look at the Appeal Tribunal’s decision, as opposed to the adjudicator’s decision. He provided to the Court a set of submissions, all of which were concerned with complaints of errors by the adjudicator.

However, the grounds of appeal and earlier submissions had dealt with some complaints of the Appeal Tribunal member’s decision, all of which related to approaches to questions of fact. No question of law was identified. The matters said in the material to justify the granting of leave to appeal are that the applicant had not appealed to the Appeal Tribunal that it sought a re-opening and that the transcript of the adjudicator’s decision was not made available to the applicant. The applicant did not address those matters here. There does seem to have been a reopening sought and refused by the Tribunal, but it was unrelated to the

Appeal Tribunal's decision, which plainly was in respect of an appeal by the applicant. The existence of a transcript is neither here nor there.

The applicant has not shown any reason which would justify the granting of leave to appeal nor identified any error of law in the Appeal Tribunal's decision. I would refuse the application for leave to appeal.

GOTTERSON JA: I agree.

MORRISON JA: I also agree.

HOLMES JA: The application for leave to appeal is refused.