

CITATION: Queensland Building Services Authority v Asset Outdoor Additions Pty Ltd [2011] QCAT 100

PARTIES: Queensland Building Services Authority
v
Asset Outdoor Additions Pty Ltd

APPLICATION NUMBER: OCR252-10

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Ms Sandra Gai Deane, Member

DELIVERED ON: 22 March 2011

DELIVERED AT: Brisbane

ORDERS MADE: [1] Asset will pay the Authority the sum of three hundred dollars (\$300.00) by way of penalty on or before 4:00pm on 19 April 2011.

[2] The application for costs is dismissed.

CATCHWORDS: Disciplinary proceedings against licensee – breach – failure of regulated contract to contain required information

Domestic Building Contracts Act 2000, s 27(1)

Queensland Building Services Authority v Metal Line Brisbane Pty Ltd [2010] QCAT 164

APPEARANCES and REPRESENTATION (if any):

This matter was heard on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

REASONS FOR DECISION

- [1] This is a disciplinary proceeding brought by the Queensland Building Services Authority (“the Authority”) against the Respondent, Asset Outdoor Additions Pty Ltd (“Asset”). At material times Asset held a contractor’s licence to perform certain classes of building work.
- [2] The application consists of a charge involving breaches of the *Domestic Building Contracts Act 2000* (“the DBC Act”).

For more information on QCAT

Call 1300 753 228 or visit www.qcat.qld.gov.au

GPO Box 1639, Brisbane Qld 4001 Fax: 07 3221 9156

Email: enquiries@qcat.qld.gov.au ABN: 13 846 673 994



- [3] On 10 February 2011 the parties consented to an order that:
- (a) the Authority withdrew offence no 1 of its application which related to an alleged breach of section 68(1) of the *Queensland Building Services Authority Act 1991* (an alleged failure to pay an insurance premium as required);
 - (b) conceded that proper grounds exist for taking action in relation the following offence: The Respondent failed to ensure that the Contract complied with the formal requirements for a regulated contract;
 - (c) the penalty and costs issue be determined on the papers.
- [4] The Tribunal has received submissions on the penalty and costs issue from the Authority on 14 February 2011 and Asset on 28 February 2011.

Background

- [5] On or about 22 October 2009 Asset entered into a contract to undertake work to construct a carport and bikeport at 46 Cobalt Street, Keperra for the sum of \$6,721.00.
- [6] The Authority issued to Asset Infringement Notice no 11176 dated 27 May 2010 in relation to an offence under section 27(1) of the DBC Act, namely failure to ensure a contract complies with certain formal requirements in respect of a contract to undertake work at 46 Cobalt Street, Keperra ("the Notice").
- [7] The penalty value of the Notice was \$200.
- [8] Asset disputed the offence by letter to the Authority dated 18 June 2010 and requested the Authority reconsider the Notice.
- [9] The Authority filed an application for disciplinary proceedings for breach of section 89(a) of the *Queensland Building Services Authority Act 1991* ("the QBSA Act").

Submissions by the Authority on Penalty

- [10] The Authority submits that an inspection of the Contract reveals that the following information was not included:
- (a) whether or not the building owner was a resident owner;
 - (b) the date the contract was made; and
 - (c) a conspicuous notice advising the building owner of the right to withdraw from the contract.
- [11] The Authority also submits that:
- (a) an appropriate penalty amount would act as a deterrent to discourage Asset and others from failing to ensure contracts signed by consumers include relevant particulars.
 - (b) the penalty should be assessed against the gravity of Asset's conduct, the purpose of the DBC Act, which includes consumer protection and that a licensee must ensure contracts entered into

comply otherwise the industry will be brought into disrepute and consumers will lose confidence in the industry.

- (c) the penalty should be equal to or higher than the fine on the Notice to avoid a multiplicity of notices being contested.
- (d) the Tribunal should order a penalty against Asset in the range of four hundred dollars to six hundred dollars (\$400.00 to \$600.00).

[12] The Authority was unable to refer the Tribunal to comparative determinations of the Tribunal or the former Commercial and Consumer Tribunal.

[13] The Authority referred the Tribunal to a number of Magistrates Court decisions which involved, inter alia, breaches of section 27(1) of the DBC Act. To the extent that the submissions indicated a separate penalty for breach of section 27(1) of the DBC Act those penalties were \$150 in the Menso case and \$500 in the Moore case, the later appears to have involved at least 6 respects in which the contract failed to comply.

Submissions by the Authority on Costs

[14] The Authority also seeks an order for costs pursuant to section 102 of the QCAT Act in relation to the proceedings in the amount of five hundred dollars (\$500.00) as set out in the *Justices Act Regulation 2004*.

Submissions by the Respondent on Penalty

[15] Asset conceded that the penalty should uphold the integrity of the DBC Act and the rights of consumers and reflect the circumstances and the gravity of the offences.

[16] Asset concedes that the Contract did not include the following information:

- (a) whether or not the building owner was a resident owner; and
- (b) a conspicuous notice advising the building owner of the right to withdraw from the contract.

[17] Asset contends that there was notice of the cooling off period in the Contract but concedes it was not in the conspicuous position required by the DBC Act.

[18] Asset submits that the breaches were minor in nature, that it has had no prior breaches and that the matter was largely resolved at the Compulsory Conference without the need for a hearing.

[19] Asset referred the Tribunal to the decision of the Tribunal in *Queensland Building Services Authority v Metal Line Brisbane Pty Ltd* [2010] QCAT 164 where the Member imposed a penalty of \$250 in respect of each breach of section 27(1) of the DBC Act and noted in that case there were other breaches also established.

[20] Asset submits that the Tribunal should order a penalty of two hundred dollars (\$200.00) being the original penalty in the Notice.

Submissions by the Respondent on Costs

- [21] Asset submits that the parties ought to bear their own costs or that if costs are awarded to the Authority in respect of the remaining charge then Asset should be awarded costs in relation to the charge that was withdrawn by the Authority on 10 February 2011.
- [22] Asset submits that the Tribunal should consider the fact that at the Compulsory Conference:
- (a) the more serious charge was withdrawn by the Authority; and
 - (b) Asset conceded non-compliance in 2 respects and thereby avoided the necessity for a hearing.

Discussion and Decision

- [23] The Authority is responsible for regulation of the building industry in a way which gives consumers confidence and does not bring the industry into disrepute. It is important that licensees understand that compliance with statutory requirements are to be taken seriously.
- [24] The Authority issued the Notice seeking a penalty of \$200. It has been put to additional expense to secure compliance.
- [25] I note Asset's previously good record.
- [26] I accept that the charge is of a relatively minor nature and that due to the concessions by Asset at the Compulsory Conference no hearing was necessary.
- [27] I accept the Authority's submission that a higher penalty than that sought in the Notice is appropriate where proceedings have been commenced to ensure compliance.
- [28] The Tribunal imposes a penalty of \$300.00.
- [29] The starting point under section 100 of the *Queensland Civil and Administrative Tribunal Act 2009* is that parties must pay their own costs unless one of them can point to a basis that is "*in the interests of justice*" within section 102.
- [30] The charge withdrawn was of a more serious nature than the one conceded. The penalty the Authority originally sought in the relevant infringement notice was \$1,000.00 as opposed to \$200.00 for the conceded charge.
- [31] The conceded charge is of a relatively minor nature. I am not satisfied that the Authority has sufficiently demonstrated that the interests of justice require the Tribunal to award costs.

Orders

- [32] Asset will pay the Authority the sum of three hundred dollars (\$300.00) by way of penalty on or before 4:00pm on 19 April 2011.
- [33] The application for costs is dismissed.