

**CITATION:** *Colmer v Queensland Building Services Authority* [2012] QCAT 89

**PARTIES:** Mr Steven John Colmer  
(Applicant)  
v  
Queensland Building Services Authority  
(Respondent)

**APPLICATION NUMBER:** GAR225-10

**MATTER TYPE:** General administrative review matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Mr Richard Oliver, Senior Member**

**DELIVERED ON:** 6 March 2012

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The applicant pay the respondent's costs fixed in the sum of four thousand, seven hundred and forty four dollars and fifty cents (\$4,744.50) by 4pm on 1 June 2012.**

**CATCHWORDS:** Costs – where applicant commenced a proceeding to review the respondent's decision and failed to comply with the Tribunal's directions – where applicant acted to the disadvantage of the respondent – where interests of justice require that a costs order be made

*Queensland Civil and Administrative Tribunal Act 2009, ss 100, 103*

*Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No 2)* [2010] QCAT 412

**APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

## REASONS FOR DECISION

- [1] On 8 July 2010 Mr Colmer filed an application to review a decision of the Queensland Building Services Authority (the Authority) which directed him to carry out rectification work at a residence at 31 Yathong Street, Arana Hills. Subsequent to the filing of the application, directions were made for the Authority to file a statement of reasons and for Mr Colmer to file statements of evidence and for the matter to proceed to a compulsory conference.
- [2] Mr Colmer filed an application for a stay of the decision which was responded to by the Authority. An order was made on 26 July 2010 refusing the stay. Further directions were made for the filing of material in September and October 2010. Mr Colmer did not comply with any of the directions but instead contended that the Tribunal was not validly constituted and that any orders made by the Tribunal were void. He requested the Tribunal not to take any further action because he had given the Tribunal a “section 38B notice” pursuant to the *Judiciary Act 1903* (Cth).
- [3] In any event, because he did not engage in the Tribunal process to advance and determine his application by complying with directions, the Authority filed an application to have his review application struck out. That application was considered by me on 21 April 2011 and an order was made striking out the review proceeding. I refer to and rely on the reasons in that decision in so far as they are relevant to this application for costs by the Authority.<sup>1</sup>
- [4] Not surprisingly, the Authority sought costs of the proceeding once it was struck out.
- [5] Section 100 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) provides that a party must bear its own costs of the proceeding. However, the Tribunal can make an order about costs if it considers that the interests of justice require it to make such an order. Subsection 3 of section 102 sets out, as a guide, those matters that might be taken into account when considering a costs application. They include, in sub paragraph (a) whether or not a party to a proceeding acts in a way that unnecessarily disadvantages another party. The Authority relies on section 102(3) in the following way:
- The applicant failed to comply with directions made by the Tribunal;
  - The issues before the Tribunal related to defective building work undertaken by Mr Colmer which, if not resolved at a compulsory conference could easily have been determined in a timely fashion at a hearing;
  - The applicant was afforded natural justice by the Authority and for that matter by this Tribunal in that he was given ample opportunity to

---

<sup>1</sup> *Colmer v Queensland Building Services Authority* [2010] QCAT 172.

comply with directions and progress his application but he chose not to do so;

- Furthermore he did not actively assist in the prosecution of his application to ensure a speedy resolution.

- [6] I accept the Authority's submission that Mr Colmer engaged in the conduct referred to above. It was that conduct which caused the Tribunal to strike out his application and it is a sufficient basis upon which a costs order ought to be made.
- [7] Section 107 of the QCAT Act provides that if the Tribunal makes a costs order under the Act the Tribunal must fix the costs if possible. The Authority, through an affidavit of Ms Roberts, has submitted a detailed schedule of costs on a standard basis under the District Court Scale of Costs. Firstly, I am satisfied that the costs should be assessed under this scale because the determination of the review of the Authority's decision involves a fresh hearing on the merits and may involve some complex expert evidence. Also there are matters to be taken into account under the *Queensland Building Services Authority Act 1991* about whether the issuing of the direction to rectify was reasonable. Secondly, on an examination of the schedule of costs by reference to the QCAT file, it does seem to be a reasonable reflection of the work undertaken by the Authority. The total costs claimed is in the sum of \$4,744.50.
- [8] Therefore I am satisfied that this is a case where the interests of justice require that a costs order be made and the Authority has, in these circumstances overcome the strong contra indication against costs orders in section 100 of the QCAT Act.<sup>2</sup> I will therefore order that Mr Colmer pay to the Authority the sum of \$4,744.50 by 1 June 2012.

---

<sup>2</sup> *Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No 2)* [2010] QCAT 412.