

CITATION: Debono v The Chief Executive, Office of Fair Trading, Department of Justice and Attorney-General [2014] QCAT 103

PARTIES: Mr Charles Debono
(Applicant)
v
The Chief Executive, Office of Fair Trading,
Department of Justice and Attorney-General
Redlands Properties Pty Ltd (Deregistered)
Catherine Rita Stephens
Margo Elizabeth Bull
(Respondents)

APPLICATION NUMBER: GAR180-13

MATTER TYPE: General administrative review matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Member Paratz**

DELIVERED ON: 20 March 2014

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The time for the filing of a claim against the claim fund by Mr Charles Debono is extended to the date upon which he lodged his claim, being 10 April 2013, pursuant to section 511 of the *Property Agents and Motor Dealers Act 2000*.**
- 2. The claim is referred to the Chief Executive for processing.**

CATCHWORDS: Where real estate agent failed to pass on rental income to lessor – where claim was 20 days out of time – whether an extension of time to claim against the claim fund should be allowed

Property Agents and Motor Dealers Act 2000
(Qld)

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] This is the decision on an Application for extension of time to bring a claim against the claim fund under the *Property Agents and Motor Dealers Act 2000* (Qld) ('the Act'). I made a previous decision on 27 September 2013 in relation to this Application as to the proper Respondents. For convenience, I will restate the facts of the matter.
- [2] Mr Debono rented premises as a Lessor through Ray White (Wellington Point).
- [3] The agent did not pay an amount of \$676.20 which appeared on the Ray White rental property statement for the period between 15 February 2011 and 1 March 2011 to Mr Debono's Suncorp bank account as required.
- [4] On about 10 April 2013 Mr Debono lodged a claim form with the Office of Fair Trading ('OFT') to seek to recover the amount from the fund established under the Act.
- [5] The OFT wrote to him on 3 May 2013 advising that his claim had been assessed as being outside the time limitation because it was lodged more than one year after he became aware of the financial loss. A PAMD Form 52 "Claim Out of Time Notice" was attached.
- [6] The letter went on to advise Mr Rigby that he could apply to this Tribunal to extend the time within which his claim may be made against the Claim Fund. The letter enclosed a QCAT Form 42 Application to extend time.
- [7] Mr Rigby filed an application for extension of time in the Tribunal on 6 June 2013 naming the Office of Fair Trading as the Respondent.
- [8] I ordered on 27 September 2013 that Redlands Properties Pty Ltd (Deregistered), Catherine Rita Stephens, and Margo Elizabeth Bull be joined as Respondents in Claim No GAR180 -13.
- [9] I noted that the proceedings and material would need to be served on the new Respondents, and that Mr Debono may not have current addresses for them. I noted that the Chief Executive was better placed to make inquiries as to their current addresses.
- [10] I directed that the Chief Executive was to give notice of these Orders and Directions to the new Respondents as soon as practicable, and give directions as follows:-
 1. The Chief Executive is to, as soon as practicable, give a copy to Redlands Properties Pty Ltd (Deregistered); Rita Stephens; and Margo Elizabeth Bull of:-
 - the Claim Form
 - the PAMD Form 52 Notice dated 3 May 2013

the letter from OFT to Mr Debono dated 3 May 2013 advising the claim was assessed as being outside the time limitation

the Application to Extend time filed on 6 June 2013, and

its submissions, and

this decision and orders, and file an affidavit of service of these documents in the Tribunal.

2. Redlands Properties Pty Ltd (Deregistered); Rita Stephens; and Margo Elizabeth Bull are to file in the Tribunal, and give a copy to each of the Chief Executive and Mr Debono, any material including submissions or statements of evidence in response, by: 4:00PM on 1 November 2013.
3. Mr Debono and the Chief Executive must file any response to the material of Redlands Properties Pty Ltd (Deregistered); Rita Stephens; and Margo Elizabeth Bull, by: 4:00PM on 15 November 2013
4. Any application for an oral hearing of the application to extend time is to be made by 15 November 2013
5. If no application for an oral hearing is made, the application for extension of time will be determined on the papers by the Tribunal not before 15 November 2013.

[11] The OFT proceeded to serve the Respondents as directed. An Affidavit of Brett Gough filed on 28 October 2013 deposes that he posted a copy of the documents to Catherine Stephens and Margo Bull on 23 October 2013. He noted that the company was deregistered.

[12] No material in response has been filed by the company, Rita Stephens or Margo Bull. No request has been made for an oral hearing. This is the decision on the papers.

[13] In their letter of 3 May 2013 to Mr Debono, the OFT said that the claim form stated that the event alleged to give rise to the claim occurred on 1 March 2011 and that Mr Debono became aware of his financial loss on 21 March 2012. It assessed the claim as being made outside the time limitations pursuant to s 472 of the Act.

[14] Section 472 provides that a claim must be made within the earlier of one year after the person becomes aware they have suffered financial loss, or 3 years after the happening of the event.

[15] On the dates in the claim form, the claim was brought 20 days after one year had elapsed from Mr Debono becoming aware of his financial loss.

[16] The Tribunal may allow an extension of time under s 511 of the Act if it is satisfied it is appropriate having regard to four factors:

Section 511(1)(b)(i) the reasons for not making the claim or seeking the review within the time allowed

[17] Mr Debono states¹ that the matter came to light when his accountant was preparing his tax return. He was advised by his accountant in March 2012 that the rental payment had not been made to his bank account. He was

¹ Statement of Charles Debono filed 15 July 2013.

under the impression at the time that his accountant would pursue the matter through appropriate channels.

- [18] He says that sometime around March or April 2013 he was talking to his accountant, and it was established that no further action had been taken by his accountant. His accountant advised that she would get the appropriate form from the OFT and forward it to him for completion.
- [19] He says that at no time during these conversations was he made aware of the fact that he only had 12 months from the date of being informed about the financial loss to lodge the form, and doesn't think the Accountant was even aware of that.
- [20] Sometime prior to 10 April he received the form and completed it and mailed it to OFT who received it on that day.
- [21] I am satisfied that Mr Debono has given a reasonable explanation as to why he did not make the claim within the one year period, as he was not aware of the period, and he thought the matter was being handled by his accountant.

Section 511(b)(ii) the application generally

- [22] The entitlement of Mr Debono to the rental income is unchallenged. This appears to simply be a matter where the agent has received the rental money as shown on the rental statement, and has kept it and not passed it on. There is no evidence of the alternate possibility that the rental statement is false.
- [23] I am satisfied generally that Mr Debono has a valid claim to the money.

Section 511 (b)(iii) for a claim, the relative hardship that an extension of time or a refusal to extend time would place on the claimant or respondent

- [24] No material has been received from the company or Catherine Stephens or Margo Bull raising any hardship they may suffer from the delay in bringing the claim.
- [25] Mr Debono may not suffer significant financial hardship over the amount of \$676.20 as he recognises, but as he says in his statement '*It is only a small amount of money in the overall scheme of things, however it is rightfully mine*'.
- [26] I am satisfied that Mr Debono would suffer hardship to some extent by a refusal to extend time, and as there is no evidence of any hardship that an extension of time would cause the respondents, then in relative terms this factor is made out.

Section 511(1)(b)(iv) the justice of the matter generally

- [27] The claim is only 20 days out of time. Mr Debono has given a simple and adequate explanation for how the delay arose. His right to the rental money is unchallenged. The justice of the matter requires that his claim against the claim fund be considered.

Conclusion

- [28] I am satisfied that an extension of time to make the claim against the claim fund is appropriate pursuant to section 511 of the Act.
- [29] I order that the time for the filing of a claim against the claim fund by Mr Charles Debono is extended to the date upon which he lodged his claim, being 10 April 2013, pursuant to section 511 of the *Property Agents and Motor Dealers Act 2000*, and refer the claim to the Chief Executive for processing.