

CITATION: *Perez & Carmody v The Godfathers Gourmet Pizza & Pasta Pty Ltd as Trustee for The Godfathers Trust* [2016] QCAT 225

PARTIES: Adrian Javier Perez
Natalie Carmody
(Applicants)
v
The Godfathers Gourmet Pizza & Pasta Pty Ltd
as Trustee for The Godfathers Trust ACN
161582565
(Respondent)

APPLICATION NUMBER: MCDO2774-15

MATTER TYPE: Other minor civil dispute matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Adjudicator Bertelsen**

DELIVERED ON: 30 June 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application is dismissed for lack of jurisdiction.**

CATCHWORDS: JURISDICTION – failed business contract – claim for return of deposit – not a debt pursuant to the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 12

APPEARANCES:

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

REASONS FOR DECISION

[1] This application is for the return of a deposit paid in respect of the proposed purchase of a pizza outlet business (business contract prepared by lawyers).

- [2] This claim does not appear to fit any of the categories of claim pursuant to s 12 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'). That being the case, the Tribunal issued orders on 11 April 2016 as follows:
1. Request for adjournment is granted.
 2. The parties are to file submissions in the Tribunal within 14 days as to why or why not this application ought be dismissed for lack of jurisdiction or alternatively transferred to the Magistrates Court for further conduct of the proceeding.
- [3] The Respondent filed submissions for the application to proceed in QCAT. The Respondent's submissions for the application to proceed in QCAT centred around the non-refundable deposit (allegedly) paid having to be utilised for payment of legal costs associated with the failed purchase contract. That does not enliven the jurisdiction of the Tribunal here.
- [4] No submissions were received from the Applicants.
- [5] The initiating application in this instance cannot be construed as a minor debt. It is an application for a refund of a deposit paid in respect of a business contract. Such an action is not catered for in the Minor Civil Disputes jurisdiction of the Tribunal.
- [6] The initiating application therefore ought properly be dismissed for lack of jurisdiction, or alternatively, transferred to the Magistrate's Court for future conduct of the proceeding. So that the cause of action can be properly pleaded, the Tribunal considers it better for the application to be dismissed for lack of jurisdiction.