

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Douglas v CTML Pty Ltd & Ors* [2018] QCAT 461

PARTIES: **LISA DOUGLAS**
(applicant)
v
CTML PTY LTD
(first respondent)
PINNACLE SALES AND MANAGEMENT PTY LTD
(second respondent)
JON FAULDER
(third respondent)

APPLICATION NO/S: ADL060-17

MATTER TYPE: Anti-discrimination matters

DELIVERED ON: 6 December 2018

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Traves

ORDERS: **IT IS THE DECISION OF THE TRIBUNAL THAT:**

- 1. Pursuant to s 63 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), the following Notices to Produce are to be issued to:**
 - (a) Classic Leisure Pty Ltd t/a Classic Holidays seeking all documents (including electronic documents) relating to Booking Number 2535641 (being a booking relating to an owner reservation for account number 1122881 on or about 4 May 2017 for the period from 5 May 2017 to 12 May 2017 be produced to the second and third respondents;**
 - (b) The Trustee for The Stephens Family Trust seeking all documents (including electronic documents) relating to booking number 15063 on 5 September 2017 in respect of a booking for the period from 6 September 2017 to 14 September 2017 be produced to the second and third respondents;**
 - (c) Cedar Creek Management Pty Ltd t/as Cedar Creek Lodges of Thunderbird Park, Mount**

Tambourine seeking all documents (including electronic documents) relating to reservation number 3072 on 4 September 2017 in respect of a booking for the period from 4 September 2017 to 6 September 2017 be produced to the second and third respondents.

THE TRIBUNAL DIRECTS THAT:

2. Pursuant to s 62 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, the applicant must provide to the respondents true copies of the following documents within 14 days of the date of these directions (and make available upon request the original documents for inspection):
 - (a) The telephone contract between Optus and the applicant to which the telephone call on 5 January 2017 relates and any other material directly relevant to the proposition that calls are billed in one minute increments;
 - (b) Documents relevant to the applicant's employment history for the three financial years ending 30 June 2017, including relevant employment contracts, income tax returns, Business Activity Statements and PAYG summaries;
 - (c) Any further documents directly relevant to the alleged theft of and recovery of personal items relating to the subsequent tenancy with Michelle Lindemann including relevant police report and charge sheet;
 - (d) Documents directly relevant to the period of tenancy with Michelle Lindemann and any relevant tenancy agreement entered into between Michelle Lindemann and the applicant;
 - (e) Documents directly relevant to any other tenancy entered into by the applicant after 5 January 2017;
 - (f) Documents directly relevant to consultations with psychiatrists, psychologists or counsellors after 5 January 2017 including which identify the dates each session occurred and with whom.
3. The application for miscellaneous matters filed by the respondents on 3 October 2018 is otherwise

dismissed.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – MOTIONS, INTERLOCUTORY APPLICATIONS AND OTHER PRE-TRIAL MATTERS – OTHER MATTERS – application for miscellaneous matters

Anti-Discrimination Act 1991 (Qld), s 7, s 82
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 62, s 63

APPEARANCES:

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

REASONS FOR DECISION

- [1] This decision relates to an application for miscellaneous matters filed by the respondents on 3 October 2018 seeking an order pursuant to s 62 of the QCAT Act that the applicant provide further particulars of her amended Statement of Contentions¹ in accordance with the Request for Further and Better Particulars attached as Annexure “A” to the application (the Request). While the request is identified as a request for particulars, it is for the most part an application for directions requiring the applicant to disclose certain documents. The Tribunal has power to make such directions under s 62(3)(b) of the QCAT Act.
- [2] The applicant filed a response to the Request on 29 October 2018 and the respondents filed a reply on 8 November 2018.
- [3] The applicant alleges that the respondents unlawfully discriminated against her by denying her the opportunity to apply for rental accommodation of a two bedroom unit situated above a dental practice at \$360 per week because she had a five-year-old son. The applicant argues this constitutes discrimination on the basis of her parental status² and/or family responsibilities³ and is unlawful due to s 82 of the *Anti-Discrimination Act 1991 (Qld)* which, relevantly, prohibits discrimination against a person in the terms on which accommodation is offered or for either failing to accept an application for accommodation or in the way an application is processed.
- [4] The applicant alleges that she made a telephone call to the letting agent on the morning of 5 January 2017 to enquire if the unit was still available for rent and to arrange a time to meet the agent. She says she then turned up at the relevant premises around noon but was told she was unable to inspect the unit. The applicant says this was because the agent found out she had a five-year-old son while the third respondent says it was because he was instructed by the owner (the first respondent) to only allow inspections before or after business hours. The applicant did not inspect the unit or apply to rent the unit and claims she was unable to find suitable

¹ Amended Statement of Contentions filed 30 May 2018.

² *Anti-Discrimination Act 1991 (Qld)*, s 7(d).

³ *Anti-Discrimination Act 1991 (Qld)*, s 7(o).

accommodation of a similar standard. She claims that this caused her financial loss as well as trauma, anxiety and grief.

- [5] The respondents have made a detailed nine-page request essentially for disclosure of certain documents by the applicant which the respondents submit are relevant to the determination of important issues in the case.
- [6] The Tribunal has a discretion as to whether to make directions that a party produce certain documents. In exercising that discretion the Tribunal will balance the costs, time and possible oppression to the party required to produce against the importance and likely benefits to the applying party.⁴
- [7] I have decided to allow the application in respect of documents or categories of documents that are most relevant to the important issues in the case, namely those which relate to the telephone call on 5 January 2017, whether the applicant had the financial capacity to pay the rent for the relevant property at the time, whether the applicant suffered financial loss and/or trauma, anxiety and grief as a result of being denied the opportunity to apply to rent the relevant property.
- [8] Other documents or categories of documents less relevant and often directed to the issue of the applicant's credibility have not been made the subject of the order to disclose. I have not made directions requiring the applicant to provide information to the respondents beyond requiring production of certain documents.
- [9] In making the directions I have also taken into account the information already provided by the applicant by way of her response to the application and of the obligation of the Tribunal to keep proceedings accessible, fair, just, economical, informal and quick.⁵
- [10] The respondents also applied for Notices to Produce to be issued to relevant third parties pursuant to s 63 of the QCAT Act. I have decided to order that the Notices be issued because the information sought from the third parties is relevant to the compensation claimed by the applicant and more generally to the issue of whether the alleged unlawful discrimination caused the financial loss and disruption claimed by the applicant.
- [11] Accordingly, I order that the Notices to Produce in Order 1 (a) – (c) be issued and direct that the applicant produce the documents in Directions 2 (a) – (e) within 14 days of the date of the Directions.

⁴ *Simpson v Thorn Australia Pty Ltd trading as Radio Rentals* [2018] FCA 1219, [9].

⁵ QCAT Act, s 3.