

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Mulder v Queensland Building and Construction Commission & Anor* [2019] QCAT 78

PARTIES: **HEINRICH GEORGE LUDIWICK MULDER**
(applicant)
v
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
and
DR FAMILY PTY LTD TRADING AS CONSOLIDATED BUILDING CONCEPTS PTY LTD
(respondents)

APPLICATION NO/S: GAR119-18; GAR145-18

MATTER TYPE: General administrative review matters

DELIVERED ON: 4 March 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS: **The parties have leave to be legally represented in the proceedings.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE OR TERRITORY COURTS – PARTIES AND REPRESENTATION – LEGAL REPRESENTATION – GENERALLY – where leave for legal representation sought – whether interests of justice require leave to be granted

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 3, s 43
Queensland Civil and Administrative Tribunal Rules 2009 (Qld), r 53

Mulder v Queensland Building and Construction Commission [2018] QCAT 242
Mulder v Queensland Building and Construction Commission [2018] QCAT 259

REPRESENTATION:

Applicant: Self-represented

First Respondent: S Monaghan

Second Respondent: Geldard Sherrington Lawyers

APPEARANCES:

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

REASONS FOR DECISION

- [1] On 12 March 2018, the Queensland Building and Construction Commission ('QBCC') decided not to issue a direction to rectify in respect of allegedly defective work described in a complaint by Mr Mulder. This decision is the subject of review by the Tribunal in proceedings GAR119-18.
- [2] On 27 March 2018, the QBCC decided to disallow Mr Mulder's claim for assistance under the statutory insurance scheme. This decision is the subject of review by the Tribunal in proceedings GAR145-18.
- [3] On 3 July 2018, the Tribunal directed that GAR119-18 and GAR 145-18 will remain as separate proceedings and travel together.
- [4] On 24 October 2018, the Tribunal joined DR Family Pty Ltd trading as Consolidated Building Concepts Pty Ltd ('Consolidated Building Concepts') as a respondent to the proceedings.
- [5] On 12 December 2018, Consolidated Building Concepts filed an application to be legally represented in the proceedings.
- [6] The effect of s 43 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) is that parties in proceedings in this Tribunal are to represent themselves unless the interests of justice require otherwise.
- [7] Section 43 relevantly provides as follows:
 - (1) The main purpose of this section is to have parties represent themselves unless the interests of justice require otherwise.
 - (2) In a proceeding, a party—
 - (a) may appear without representation; or
 - (b) may be represented by someone else if—
 - (i) the party is a child or a person with impaired capacity; or
 - (ii) the proceeding relates to taking disciplinary action, or reviewing a decision about taking disciplinary action, against a person; or
 - (iii) an enabling Act that is an Act, or the rules, states the person may be represented; or
 - (iv) the party has been given leave by the tribunal to be represented.

- (3) In deciding whether to give a party leave to be represented in a proceeding, the tribunal may consider the following as circumstances supporting the giving of the leave—
- (a) the party is a State agency;
 - (b) the proceeding is likely to involve complex questions of fact or law;
 - (c) another party to the proceeding is represented in the proceeding;
 - (d) all of the parties have agreed to the party being represented in the proceeding.

...

- [8] In accordance with s 43(2)(b)(iv), Consolidated Building Concepts requires the leave of the Tribunal to be legally represented as it does not satisfy s 43(2)(b)(i) to s 43(2)(b)(iii).
- [9] The Tribunal's discretion when considering whether to grant leave for a party to be represented is exercised in the context of the requirement to comply with the interests of justice as set out in s 43(1), as well as the additional factors set out in s 43(3).
- [10] The Tribunal has previously granted leave to the QBCC to be legally represented through an in-house legal officer.¹ In these circumstances, that is to say where another party to the proceeding is legally represented, I consider it is in the interests of justice that Consolidated Building Concepts also have leave to be legally represented.
- [11] I note in passing that while the QBCC was given leave under rule 53 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) to be represented by an in-house legal officer, this rule does not apply to Consolidated Building Concepts as it is not a state agency.
- [12] Given the basis upon which I am granting leave, it appears efficacious to grant all parties leave to be legally represented.

¹ *Mulder v Queensland Building and Construction Commission* [2018] QCAT 242; *Mulder v Queensland Building and Construction Commission* [2018] QCAT 259.