

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *The Chief Executive, Office of Fair Trading, Department of Justice & Attorney-General v Tivoli Gardens Ipswich Pty Ltd & Ors* [2020] QCAT 140

PARTIES: **THE CHIEF EXECUTIVE, OFFICE OF FAIR TRADING, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL**  
(applicant)

v

**TIVOLI GARDENS IPSWICH PTY LTD**

**AILS A DAVIES**

**CASSANDRA BLYTHE IOLE SCHOLES**  
(respondents)

APPLICATION NO/S: OCL051-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 27 April 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS: **Pursuant to sections 117 and 119 of the *Agents Financial Administration Act 2014* (Qld), Tivoli Gardens Ipswich Pty Ltd, Ailsa Davies and Cassandra Blythe Iole Scholes are ordered to jointly and severally pay to the Claim Fund established under section 78 of the *Agents Financial Administration Act 2014* (Qld) the sum of \$33,886.94 within 21 days of the date of this order.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – Claim Fund under *Agents Financial Administration Act 2014* (Qld) – whether reimbursement order should be made – where relevant event was expiry of Resident Letting Agent Corporation Licence – where receiver appointed – where requirements for reimbursement order for receiver remuneration and costs met – where Tribunal does not have discretion when requirements met

*Agents Financial Administration Act 2014* (Qld), s 64, s 75, s 78, s 102, s 116, s 117, s 118, s 119

*Property Agents and Motor Dealers Act 2000 (Qld),*  
s 434

*Queensland Civil and Administrative Tribunal Act 2009*  
(Qld), s 157

*Queensland Civil and Administrative Tribunal Rules*  
2009 (Qld), r 39

*The Chief Executive, Department of Justice and Attorney-  
General v Wanless* [2015] QCAT 128

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

### What is this Application about?

- [1] On 16 January 2013, Tivoli Gardens Ipswich Pty Ltd allowed its Resident Letting Agent Corporation Licence to expire. Consequently, the Chief Executive, Office of Fair Trading, Department of Justice and Attorney-General appointed a receiver over its trust property.
- [2] The Chief Executive paid \$44,741.81 to the receiver to administer Tivoli's trust account following the expiration of its licence.
- [3] The receiver paid the balance of \$10,854.97 remaining in the trust account to the Chief Executive. The Application for a reimbursement and supporting material filed with the Tribunal states this was then applied towards the Claim Fund for an outstanding claim against Tivoli for \$401.00.<sup>1</sup> The remainder was applied towards the receiver's costs.
- [4] The Chief Executive now seeks reimbursement of \$34,287.84 from Tivoli and its executive officers, Ailsa Phyllis Davies and Cassandra Blythe Iole Scholes.
- [5] None of the respondents engaged with the Tribunal process.

### Have the requirements for a reimbursement Order been met?

- [6] The Tribunal must make a reimbursement Order if:
  - (a) The Application includes the prescribed Information Notice, letter of demand and statutory declaration attesting to the amount owing;<sup>2</sup>
  - (b) The respondents have not paid the amount owing;<sup>3</sup>

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<sup>1</sup> Amended Statement of Claim dated 17 July 2019, paragraph 4, Letters of Demand dated 13 May 2015.

<sup>2</sup> *Agents Financial Administration Act 2014* (Qld), s 117.

<sup>3</sup> *Ibid*, s 119(2)(a).

- (c) The Chief Executive has made a decision about the claim against the Fund;<sup>4</sup>
- (d) The Chief Executive's decision names the respondents as the persons liable to reimburse the Fund;<sup>5</sup>
- (e) The respondents did not apply to the Tribunal to review the Chief Executive's decision, or upon review the Tribunal decided the respondents are liable to reimburse an amount to the Fund;<sup>6</sup> and
- (f) Written notice of the Chief Executive's decision, a copy of the decision and the prescribed Information Notice were given to the respondents.<sup>7</sup>

[7] Upon these requirements being met, the Tribunal does not have a discretion – it must make a reimbursement Order.<sup>8</sup>

[8] The Application filed on 29 July 2019 includes:

- (a) An 'Appointment as Receiver' attaching invoices for costs totalling \$44,741.81.<sup>9</sup>
- (b) A letter of demand for \$34,287.84 for receiver costs of \$44,741.81 plus claim under paid under the Fund of \$401.00<sup>10</sup> less trust balance of \$10,854.97;<sup>11</sup> and
- (c) A statutory declaration of the Chief Executive's authorised delegate attesting that \$34,287.84 remains outstanding to the Fund, used to settle one claim and receiver costs.<sup>12</sup>

[9] The Chief Executive sent the 'Appointment as Receiver' and letter of demand by ordinary prepaid post, separately to each of the respondents at their last known address.<sup>13</sup> The letter of demand required each respondent to pay the amount of the debt within one month.<sup>14</sup>

[10] The Chief Executive sent the Application by post to the last known address for each of the respondents,<sup>15</sup> and invited them to make written submissions,<sup>16</sup> for the

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<sup>4</sup> Ibid, s 119(3)(a).

<sup>5</sup> Ibid, s 119(3)(b), s 116(1)(a).

<sup>6</sup> Ibid, s 119(3)(c).

<sup>7</sup> Ibid, s 119(3)(d).

<sup>8</sup> *The Chief Executive, Department of Justice and Attorney-General v Wanless* [2015] QCAT 128.

<sup>9</sup> 'Appointment as Receiver' dated 21 August 2013.

<sup>10</sup> *Agents Financial Administration Act* 2014 (Qld), s 64.

<sup>11</sup> Letter Adrian Tan to Tivoli Gardens Ipswich Pty Ltd dated 13 May 2015.

<sup>12</sup> Statutory Declaration of Nicholas Pirie sworn 17 July 2019.

<sup>13</sup> Amended Statement of Claim dated 17 July 2019, paragraphs 9, 10, 11.

<sup>14</sup> *Agents Financial Administration Act* 2014 (Qld), s 75(4).

<sup>15</sup> *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld), r 39; QCAT Practice Direction 8 of 2009; Affidavit of Brett Gough sworn 9 September 2019.

<sup>16</sup> Letter Brett Gough to Tivoli Gardens Ipswich Pty Ltd dated 9 August 2019; Letter Brett Gough to Ailsa Phyllis Davies dated 9 August 2019; Letter Brett Gough to Cassandra Blythe Iole Scholes dated 9 August 2019.

Tribunal's consideration about when and how they intend to satisfy the amount owing.<sup>17</sup> The Tribunal also gave the respondents an opportunity to file written submissions.<sup>18</sup>

- [11] The respondents are jointly and severally liable to reimburse the Chief Executive for the amount paid to the receiver.<sup>19</sup> However, the Application filed with the Tribunal does not include an Information Notice showing that each respondent was notified of the decision to pay the \$401.00 for the alleged outstanding claim against Tivoli from the Claim Fund.<sup>20</sup> Because the Tribunal cannot be satisfied that the Application was accompanied by the prescribed Information Notice for the claim of \$401.00,<sup>21</sup> it cannot make a reimbursement order for this amount.<sup>22</sup> This amount will need to be deducted from the total amount sought to be reimbursed.
- [12] None of the respondents applied to review the Chief Executive's decision.
- [13] I am therefore satisfied:
- (a) The Chief Executive has paid receiver remuneration and costs;
  - (b) Written notice of the receiver's appointment was given to the respondents;
  - (c) None of the respondents has applied to the Tribunal for review;
  - (d) None of the respondents has paid the amount owing; and
  - (e) The respondents are jointly and severally liable to reimburse the Fund the sum of \$33,886.94.

### **What is the required Order?**

- [14] Because I am satisfied that the prescribed requirements are met for receiver remuneration and costs, I must make a reimbursement Order as follows:

Pursuant to sections 117 and 119 of the *Agents Financial Administration Act 2014* (Qld), Tivoli Gardens Ipswich Pty Ltd, Ailsa Phyllis Davies and Cassandra Blythe Iole Scholes are ordered to jointly and severally pay to the Claim Fund established under section 78 of the *Agents Financial Administration Act 2014* (Qld) the sum of \$33,886.94 within 21 days of the date of this order.

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<sup>17</sup> *Agents Financial Administration Act 2014* (Qld), s 118(1)(c).

<sup>18</sup> Directions dated 16 August 2019 and 8 November 2019.

<sup>19</sup> *Property Agents and Motor Dealers Act 2000* (Qld), s 434.

<sup>20</sup> *Agents Financial Administration Act 2014* (Qld), s 102, s 117(4)(a); *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 157(2).

<sup>21</sup> *Agents Financial Administration Act 2014* (Qld), s 119(2)(b) and(3)(d).

<sup>22</sup> *Ibid*, s 117(4)(a), s 119(2)(b) and (3)(d).