

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Fridgy's Air Pty Ltd As Trustee for the Empire Family Trust t/as Fridgy's Air v Pebble Beach International Finance Pty Ltd & Anor* [2020] QCAT 242

PARTIES: **FRIDGY'S AIR PTY LTD AS TRUSTEE FOR THE EMPIRE FAMILY TRUST T/AS FRIDGY'S AIR**  
(applicant)

v

**PEBBLE BEACH INTERNATIONAL FINANCE PTY LTD**

**MILLENNIUM CAPITAL HOLDINGS PTY LTD**  
(respondents)

APPLICATION NO/S: BDL 137-18

MATTER TYPE: Building matters

DELIVERED ON: 2 January 2020

HEARING DATE: 23 April 2019

HEARD AT: Brisbane

DECISION OF: Member Paratz

ORDERS: **1. Pebble Beach International Finance Pty Ltd is to pay to Fridgy's Air Pty Ltd as Trustee for the Empire Family Trust t/as Fridgy's Air the amount of \$13,980.34.**

CATCHWORDS: EQUITY – GENERAL PRINCIPLES – UNJUST ENRICHMENT – GENERAL PRINCIPLES

Where an air-conditioning contractor performed repair work to the air-conditioning system of a building – whether the owner of the building was enriched by the work and was liable to pay the costs of the work to the contractor – where a claim for unjust enrichment was discussed

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 100, s 102

*Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Haxton* (2012) 246 CLR 498

*Fisher v Wenzel and another* (2016) QCAT 56

**APPEARANCES &  
REPRESENTATION:**

Applicant: Ms J Baddington (by leave)

Respondent: Pebble Beach International Finance Pty Ltd – Mr  
J Crowther of Whitehead Crowther, Solicitors

Millennium Capital Holdings Pty Ltd – no appearance

**REASONS FOR DECISION**

- [1] Mr Craig Hopkins is a director of Fridgy's Air Pty Ltd as Trustee for the Empire Family Trust t/as Fridgy's Air ('Fridgy'). The business provides refrigeration, air-conditioning and mechanical services.
- [2] Fridgy performed works at a building at 25 Millennium Court, Helensvale. The building was owned by Pebble Beach International Finance Pty Ltd ('Pebble Beach').
- [3] Millennium Capital Holdings Pty Ltd ('Millennium') was a tenant of the building. It operated as Millenium Pet Foods. It used and shared areas of the building with another business: Saville's Fresh Markets Pty Ltd also known as Saville's Butchers, Saville's Meats, and Savilles ('Savilles').
- [4] Savilles used the ham cold room, centre and middle cold room to store hams, and the middle and site preparation area next to the ham room. Millennium and Savilles shared the boning room.
- [5] Fridgy's claim is for \$20,388.87 against Pebble Beach and Millennium for refrigeration works performed at the premises between January 2016 and August 2016.
- [6] Pebble Beach disputes the claim on the basis that it did not contract with Fridgy to do the work, and that Millennium did so, and is responsible for the debt.
- [7] Millennium did not file a Response or make any appearance in the proceedings. At the commencement of the hearing, I discussed service of the application upon Millennium with the parties, and ruled that I was not currently satisfied that effective service of the proceedings have been made on Millennium. Fridgy then elected to proceed only with its claim against Pebble Beach.
- [8] Fridgy's claim against Pebble Beach is a claim in restitution based upon unjust enrichment.
- [9] The parties filed written submissions, and submissions in response and reply, after the hearing.

**Submissions of Fridgy as to the history of the tenancies and work done**

- [10] It is convenient to reproduce the history of the tenancies and work done, as contended in Fridgy's written submission, as follows:<sup>1</sup>

9. Archibald Livestock Pty Ltd tenanted the premises from mid 2015 until it ceased trading in January 2016. (Millennium) then tenanted the premises.

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<sup>1</sup> Applicant's submission filed 3 May 2019 at [9] to [19].

10. Daniel McGettigan was the director of Archibald Livestock Pty Ltd from 31/8/2010 and ceased on 5/5/2015. Selwyn Montagu (who resides in New Zealand) was director from 3 February 2015 until the company ceased trading. Daniel McGettigan was declared a bankrupt from 6 November 2014.

11. Lauren Turnbull (aka Cowling) was a director of (Millenium) from 22/10/2015 and ceased on 30/10/2016.

12. During 2015 and 2016 when Archibald Livestock Pty Ltd and (Millenium) separately tenanted the premises, (Saville) also tenanted the building. Troy Saville is the director of (Saville) and gave evidence on its behalf by way of telephone at the hearing.

13. (Fridgy) produced to the Tribunal at the hearing, a sketch showing the layout of the premises and which rooms were utilised by (Millennium) and (Saville). The sketch is referred to as exhibit 'A'.

14. (Pebble Beach's) defence partly relied upon the statement of Trevor Saville, director of (Pebble Beach), that (Millennium) was under a verbal commercial lease which terms were the same as Archibald Livestock Pty Ltd. This included (Millennium) being liable for any refrigeration maintenance to the premises.

15. Trevor Saville gave evidence that he was not in possession of the 'Lease' for Archibald Livestock Pty Ltd, and confirmed that whilst Savilles were paying rent as a tenant, they did not have a written lease with (Pebble Beach).

16. Savilles was still occupying the premises at the date of the hearing.

17. Trevor Saville advised (Fridgy) that any maintenance requested by Daniel McGettigan was to be done. Mr Saville when cross-examined, stated he was not aware in 2016 that Daniel McGettigan was a bankrupt.

18. (Fridgy) had performed maintenance and repairs at the premises for some years prior to 2016. This was at the request of Archibald Livestock Pty Ltd (Daniel McGettigan), (Saville) and/or Troy Saville. All invoices for work done by (Fridgy) prior to 2016 were paid by the relevant parties.

19. Trevor stated in cross examination that the refrigeration system at the premises had not had a full inspection, prior to either Archibald Livestock Pty Ltd or (Millennium) becoming tenants, to ascertain the state of the refrigeration system as a whole. He further stated that another building in Eagleby that (Pebble Beach) owned and had tenanted, was inspected by a refrigeration tradesman prior to any tenants occupying the premises so that (Pebble Beach) was fully aware of the condition of the refrigeration system in that building.

[11] The history of the work done was described by Fridgy in its submissions as follows:<sup>2</sup>

20. In January 2016, (Millennium) by way of Daniel McGettigan, contacted (Fridgy) to install two refrigeration cabinets which were supplied by Trevor Saville. Verbal permission to do so was given by Trevor Saville to Craig Hopkins.

21. Whilst (Fridgy) was installing the cabinets and refrigeration unit, he advised Trevor Saville that it could not be attached to the existing pipes. (Fridgy) explained to Mr Saville that he had sought advice from his supplier and engineer as to what could be used to match up the two cabinets to the

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<sup>2</sup> Ibid [26] to [41].

existing unit and pipes. The advice was that the existing pipes were the wrong size and did not match with the cabinets, and the unit was the incorrect kilowatt size.

22. The only viable place was to put the unit on the roof of the premises which (Fridgy) did. Mr Saville was made aware of this.

23. Upon instructions from Trevor Saville, (Fridgy) invoiced (Millennium) the amount of \$6,408.53 (incl GST) for labour and materials to install the cabinets and refrigeration unit, together with some repairs to leaks found. This is reflected in invoice #2076 dated 5/1/16 in the amount of \$5,693.53. The invoice #2167 dated 18/3/16 in the amount of \$715.00 was for repairs to the factory refrigeration system for all rooms and installation of dryer in large room of the building.

24. (Millennium) has not disputed the invoice or the performance of the work. Avoid of a number of attempts to serve (millennium) with all the documentation in this matter, they did not file a response. The tribunal accepted the affidavit of service sworn by Judith Babington in February 2019.

25. (Pebble Beach) has not disputed invoice #2076 or invoice #2167 or the performance of (Fridgy's) work, until Trevor Saville took issue with the refrigeration unit being placed on the roof. This was only mentioned just prior to the applicant filing the claim with QCAT in 2018. Between 2016 and 2018, Mr Saville did not contact the applicant in relation to any issues with the work.

26. On 15 July 2016, Craig Hopkins for (Fridgy) was at the premises when he discovered the Rack had a failed compressor 2 locked on from a faulty contactor. Mr Thompkins advised both Trevor Saville and Daniel McGettigan that it would need to be investigated and to repair the problem. Both Mr Saville and Mr McGettigan said words to the effect 'it has to be fixed'.

27. On Sunday, 17 July 2016, Trevor Saville called (Fridgy) to request that he attend the premises to fix refrigeration in the cooked ham room, as it was running warm. This room was occupied by (Saville).

28. (Fridgy) investigated the issue and discovered that the rack system which refrigerated the whole factory was very short of refrigerant. (Fridgy) advised Trevor Saville that an extensive leak test would have to be done.

29. (Fridgy) found the coil in the Cooked Ham room was badly corroded. After trying to repair the coil, (Fridgy) advised Trevor Saville that the call was beyond repair with the only option to either disconnect it or have it replaced. Mr Saville instructed (Fridgy) to replace the coil, which was done and an invoice # 2259 dated 1 August 2016 was made payable to 'Saville Meats' for the new coil. The invoice was paid.

30. Mr Saville did not deny that the coil needed replacing at that time due to age, wear and tear. The building was a very old one with a large refrigeration system throughout.

31.(Fridgy) discovered that the whole refrigeration system and a number of leaks in the pipes whereby refrigeration was escaping. They had to be repaired for the system to continue to operate.

32. On or around 19 July 2018, another issue was found with the Refrigeration Rack. The main liquid line dryer core housing internals were damaged and required to be replaced. Troy Saville was at the premises and (fridgy) advised

him of the issues. Trevor Saville said words to the effect 'if it needs to be replaced then it has to be done'. (Fridgy) did fix the problem.

33. (Fridgy) investigated and located leaks, repaired pipes (providing materials to do so) and put refrigerant in the system, completing the work over various days in July and August 2016.

34. (Fridgy) advised Trevor Saville after the job was completed, that all the repairs were to the structural pipes and rack system due to age, wear and tear, and that the owner of the building was liable to pay for it. (Fridgy) also told Mr Saville that there was a substantial amount of refrigerant replaced which serviced the whole premises. Trevor Saville confirmed this conversation when he was cross-examined at the hearing.

35. Trevor Saville advised (Fridgy) that it was the responsibility of (Millennium) to pay for the repairs under the lease and to invoice them, which (Fridgy) did. Trevor Saville confirmed this when he gave evidence at the hearing.

36. (Fridgy) issued an invoice #2407 dated 15 July 2016 in the amount of \$13,980.34 to (Millennium). (Fridgy) generated the invoice on 15 July 2016 and on each date that he performed works at the premises, he added details of same to the invoice. (Fridgy) completed the works on 15 August 2016.

37. Daniel McGettigan on behalf of (Millennium) advised (Fridgy) that there was no Lease and that due to the age of the building and the damage present before Millennium took over, the invoice should be made payable to (Pebble Beach).

38. Some time passed and avoid of continual requests by (Fridgy) to both (Pebble Beach) and (Millennium) for payment of invoice #2407, neither would satisfy the account.

39. On one occasion Trevor Saville advised (Fridgy) to invoice (Saville) for invoice #2407 as he was getting paid by one of (Millennium's) customers directly, he would pay (Fridgy's) invoice from money he received.

40. (Fridgy) then issued invoice #2407 in the name of Saville's Meats, which is referred to as exhibit 'B'. Mr Saville later advised (Fridgy) to reissue in the name of (Millennium). Trevor Saville confirmed this at the hearing, stating to the effect that he was number one to get paid.

41. The amount charged for materials in invoice #2407 by (Fridgy) was \$2,015.09. The refrigerant alone was \$7,139.00 (there had been substantial leakage) and labour to carry out all works on the building was \$4,826.25.

### **Submissions of Pebble Beach**

- [12] Pebble Beach submits that it agrees with paragraphs 9 to 17 of the submissions by Fridgy (above) as to the history of the matter.
- [13] Pebble Beach submits that it did not enter into any contract, verbal or written, with Fridgy to do refrigeration works at 25 Millennium Court from January 2016 onwards, except for the cost of a new coil for the cold room which Mr Saville agreed to pay for, which was properly invoiced for by Fridgy, and paid.<sup>3</sup>
- [14] Pebble Beach submits that the party liable for the unpaid work is Millennium, and that there are a number of indicators which point to the fact that the work done early

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<sup>3</sup> Submissions on behalf of the first respondent filed 20 May 2019 at [8].

in 2016, and then the more expensive work later that year, were the responsibility of Millennium:<sup>4</sup>

- (a) that when Archibald Livestock Pty Ltd became a tenant of 25 Millennium Court, Trevor Saville introduced (Fridgy) to Daniel McGettigan as the preferred refrigeration mechanic for the building, and told Craig Hopkins that it was the tenant's obligation under the lease to pay for refrigeration work.<sup>5</sup>
- (b) That Fridgy filed an amended application in December 2018 withdrawing any claim against Pebble Beach concerning the works carried out at the request of the tenant in early 2016.<sup>6</sup>
- (c) The party normally responsible for works is the party whom the contract invoices and that in this matter there has been 'quite extraordinary behaviour' as invoices were issued, withdrawn and reissued.<sup>7</sup> Pebble Beach notes that the larger job later in the year was split between two invoices from Fridgy, that one invoice was issued to Pebble Beach for the coil which it paid, and at about the same time the other works were invoiced to the tenant, which was not paid.<sup>8</sup>
- (d) There is an abundance of evidence from Fridgy that all of the unpaid works were ordered by Mr McGettigan, and submits:<sup>9</sup>

26. This was reinforced by the evidence which Mr Saville gave at the trial that when Mr Saville challenged Mr Tomkins about work being carried out at the premises which, in his view, caused the coil to break, Mr Hopkins informed him 'I take my directions from Daniel McGettigan'. That indicated that Mr Hopkins regarded himself as not being contractually bound to (Pebble Beach).

27. Mr Saville on behalf of (Pebble Beach) authorised the cabinet in the tenant's showroom to be connected to the motor room. (Fridgy) did not comply with his instructions and put a motor on the roof and ran new pipes through the building, contrary to directions from the landlord. Mr Saville gave evidence on this. This behaviour of (Fridgy) is indicative of someone who considered that his contractual obligation was to Mr McGettigan, rather than the landlord as he did not follow the landlord's direction.

- (e) Mr Troy Saville and Jay Sowden both provided evidence to the Tribunal in support of the fact that Mr Hopkins considered Mr McGettigan to be the person who owed him money for the work.

[15] Pebble Beach alleges that Fridgy has only brought these proceedings against it as a resourced party:<sup>10</sup>

11. Its [sic] clear from (Fridgy's) actions that the purpose of the application in these proceedings wasn't to enforce an agreement between the parties who made it but rather to get paid by someone who was still around to pay and who had the resources to paid it i.e. the owner of the land, (Pebble Beach). If it were otherwise (Fridgy) would have issued proceedings against (Pebble

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<sup>4</sup> Ibid at [10] and [11].

<sup>5</sup> Ibid at [12].

<sup>6</sup> Ibid at [16].

<sup>7</sup> Ibid at [17].

<sup>8</sup> Ibid at [20].

<sup>9</sup> Ibid at [21].

<sup>10</sup> Submissions on behalf of the first respondent filed 24 May 2019 at [11].

Beach) at the outset. Therefore (Fridgy) has a collateral purpose of getting paid without having proper regard to who should pay for it and a proper basis upon which the invoices should be paid. Had (Fridgy) pursued the entity it invoiced originally then it would have been unnecessary for (Pebble Beach) to defend these proceedings.

### **Discussion**

- [16] This matter is an example of parties trying to attribute clear legal consequences to a situation where there are not clear legal relationships between the parties, and where the parties have not clearly documented matters.
- [17] There are two adjoining buildings – 23 Millenium Circuit and 25 Millenium Circuit.
- [18] Savilles operates its principal butchery business from 23 Millenium Circuit, which is owned by Saville Pacific Property Pty Ltd. Mr Saville is a director of that company.
- [19] Both Savilles and Millenium operated from parts of the building at 25 Millenium Circuit (‘the building’), which is owned by Pebble Beach. Mr Saville is a director of Pebble Beach.
- [20] In the course of giving his evidence, Mr Hopkins referred to a sketch of the building at 25 Millennium Circuit<sup>11</sup>, which showed the areas of the building which were used either separately or conjointly by Millennium and Saville’s Fresh Meat Markets, and which in total appear to be of the order of half of the building (although it is unclear whether the sketch is to scale).
- [21] The sketch shows that the areas used exclusively by Saville’s Fresh Meat Markets appear to be of the order of a quarter of the building and were described as following:
- (a) Ham smoker room
  - (b) Cooker ham room
  - (c) Little preparation area
  - (d) Middle room
- [22] The sketch shows that the areas used conjointly by Saville’s Fresh Meat Markets and Millennium appear to be of the order of a further quarter of the building and were described as following:
- (a) main corridor
  - (b) large unallocated area
- [23] Mr Saville said in evidence that there was no formal lease between Pebble Beach and Savilles for the use of parts of the building by Savilles, and that Savilles ‘sometimes’ paid rent to Pebble Beach ‘on occasions’.
- [24] Mr Saville was a director of both companies that owned the respective buildings. It is apparent that Mr Saville treated the two buildings as complimentary, conducted the business of Saville Meats across both buildings, and operated on an ‘as-needs basis’ using facilities of both buildings, as available and required by him.

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<sup>11</sup> Exhibit 1.

- [25] It is not disputed that the building was old, and the air-conditioning system required maintenance.
- [26] The picture that emerges is one of Mr Saville effectively acting as an owner-occupier, who would let part of the premises as suited him, and use part of the premises as suited him, without specific regard for legal niceties. The lines between his interests and activities as a director of Pebble Beach, and the conduct of his own butchers business, appear blurred and indistinct.
- [27] Mr Saville states that Pebble Beach had a lease with Archibald Livestock Pty Ltd ('Archibald') for the premises at 25 Millennium Circuit Court commencing on or about April 2015 for a period of 12 months with two three-year options available.<sup>12</sup> However, Archibald went into liquidation within the lease period. No signed copy of the lease was produced in the proceedings, as Mr Saville said that he could not locate a copy.
- [28] Mr Saville states that he was then approached by the former bookkeeper of Archibald, Lauren Julie Cowling, as a director of Millennium and asked him to allow Millennium to lease the premises on the same terms that Archibald had with Pebble Beach; and that he and the other director of Pebble Beach agreed to lease the premises to Millennium on that basis.<sup>13</sup>
- [29] Mr Saville describes this as a 'verbal lease'.<sup>14</sup>
- [30] It is telling that there was no signed lease between Pebble Beach and Millennium. No explanation is given as to why a formal written lease was not entered into between Millennium and Pebble Beach in the same way as one was entered into between Archibald and Pebble Beach.
- [31] The willingness of Pebble Beach to enter into a 'verbal lease' is symptomatic of Mr Saville acting in a pragmatic way, rather than a clearly documented and defined way.
- [32] Mr Saville retained a very hands-on involvement in the running of the building. He used part of the building in question for his own purposes as and when it suited him, for the cooking and storage of hams and for other purposes.
- [33] Fridgy is a contractor who had previously done work for Pebble Beach, and was familiar with the building. Mr Hopkins presented as a tradesperson who was focused on the practical aspects of making an old air-conditioning system, which was in need of maintenance, operable.
- [34] Mr Saville had an active involvement in directing the work of Mr Hopkins.
- [35] It is notable that the refrigeration cabinets which were installed by Fridgy for Millennium were in fact provided by Mr Saville. This does indicate the level of involvement by Mr Saville as there is no indication that Millennium bought the units from Saville Meats or anyone else, or that the rent was adjusted to provide for them. This free provision and sharing of assets is consistent with my view of the manner in which Mr Saville was managing the buildings.

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<sup>12</sup> Statement of Trevor Charles Saville filed 16 October 2018 at [4].

<sup>13</sup> Ibid at [6] and [7].

<sup>14</sup> Ibid at [3].

- [36] I found Mr Craig Hopkins to be a straightforward and believable witness. Where his evidence is not contradicted, I accept the history of events he described. Where his evidence is contradicted, I prefer his version of events.
- [37] Where the submissions of Fridgy as to fact refer to the evidence of Mr Craig Hopkins; or where it is clear that the actions or recollections as to fact attributed to the company are actually a reference to actions or recollections as to the fact by Mr Craig Hopkins; I prefer the submissions of fact made on behalf of Fridgy.
- [38] Mr Hopkins is not a sophisticated businessperson in terms of drawing up precise accounts. I consider that he has amended his invoices as to who they were payable by, variously upon request from the parties, or in frustration, as he found himself caught as ‘the meat in the sandwich’ between Pebble Beach and Millennium. Further, he said in evidence that he was unaware that the Pebble Beach was the owner of the building at the time he performed the work, and that he was only advised of this later when he was pursuing payment.
- [39] Mr Saville acknowledges that he made a comment to Fridgy that he was owed money by Millennium also, and expected to be paid in priority to Fridgy:<sup>15</sup>

50.... I recall during one of these conversations saying to the applicant that I am owed money by Daniel as well and that when I asked for my money I would remind Daniel to pay (Fridgy) as well but also said in the same conversation words to the effect ‘I’m first in the queue’..

- [40] I note that whilst this might be an attitude that has attraction to Mr Saville, it is not founded in any legal principle, as there no indication as to why Pebble Beach would stand in priority to any other creditor.
- [41] An issue in this matter is differentiating the work that was done purely to Millennium’s benefit, and work which was also of benefit to Pebble Beach. I look to the invoices to discern what work is in each category.
- [42] The invoices claimed by Fridgy are as follows:

Invoice #2407

Labour \$4,826.25  
Refrigerant \$7,139.00  
Parts \$2,015.09

Total \$13,980.34

Invoice #2076

Labour \$2,323.75  
Refrigerant \$643.50  
Parts \$2,726.28

Total \$5,693.53

Invoice #2167

Labour \$715.00

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<sup>15</sup> Ibid at [50].

- [43] The works performed by Fridgy fall into two categories:
- (a) installation of refrigeration unit and pipes to cabinets
  - (b) work performed to repair leaking refrigeration system
- [44] Fridgy submits in relation to installation of the refrigeration unit and pipes to cabinets, that Invoice #2076 for \$5,693.53 was for labour and materials to install the cabinets and refrigeration unit, together with some repairs to leaks found; and that Invoice #2167 for \$715.00 was for repairs to the factory refrigeration system for all rooms and installation of dryer in large room of the building.<sup>16</sup>
- [45] Fridgy submits in relation to work performed to repair the leaking refrigeration system that Invoice #2407 in the amount of \$13,980.34 was for that work.
- [46] It is not contested that Fridgy was called by Mr Saville on 17 July 2016 to fix refrigeration in the cooked ham room, which was occupied by Savilles. Fridgy submits that the coil in the cooked ham room was badly corroded due to age, wear and tear, in common with the building which was a very old one with a large refrigeration system throughout. Fridgy replaced the coil and sent invoice #2259 to Savilles Meats for the new coil, which was paid.
- [47] Fridgy submits that in the course of performing the works to replace the coil, he discovered that the whole refrigeration system had a number of leaks in the pipes whereby refrigeration was escaping, which had to be repaired for the system to continue to operate.<sup>17</sup> Fridgy submits that all repairs were to the structural pipes and rack system due to age wear and tear.<sup>18</sup>
- [48] Fridgy submits that Pebble Beach was aware of the work being done, as it was being performed, and that Mr Saville was involved in discussions as to it<sup>19</sup>:

11. Mr Saville did query (Fridgy) as to the position of the unit. Mr Hopkins explained to Mr Saville and gave evidence at the hearing, that the pipes were not the correct ones and could not be used, therefore, new pipes would have to be installed. He further stated that the only other place to put the unit was on the roof. Mr Saville was cross-examined on this point, whereby he was asked how did he know that the unit could be attached to the pipes. He stated words to the effect 'I just know'. Mr Saville is not a refrigeration tradesman and could not know more than (Fridgy) in this regard.

12. Mr Saville was present at times when (Fridgy) was installing the cabinet and unit on the roof. He did not then or at any time until the beginning of these proceedings, ask (Fridgy) to remove it. No evidence was produced by Mr Saville to show when he had requested (Fridgy) to remove the unit.

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14. (Pebble Beach) has addressed the liability for payment of the cabinet installation at length, however, the claim for work done to the pipes and replacement of refrigerant is the main issue. Mr Saville was told by Mr Hopkins of the condition of the pipework and what was required to fix it. This was a wear and tear problem due to the age of the building and refrigeration system...

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<sup>16</sup> Applicant's submission filed 3 May 2019 at [23].

<sup>17</sup> Ibid at [31].

<sup>18</sup> Ibid at [34].

<sup>19</sup> Applicant's reply to first respondent's submission filed 24 May 2019 at [11] to [14].

- [49] I am satisfied that Pebble Beach was aware of the nature of the work being done, and that if Mr Saville had concerns as to the work being done, he would have stepped in and made his views known, consistent with his active management of the premises.
- [50] The work that was done to install the refrigeration units and pipes to cabinets was work which was requested by Millennium for the conduct of its own business, which involved a retail shop area.
- [51] Whilst Savilles provided the display cases to Millennium for the purposes of retail sales, it has not been demonstrated that the premises were improved by their installation, and that it made the premises more attractive to a subsequent lessee. Mr Saville said in evidence that the cabinets had been dumped, so they provide no ongoing benefit to Pebble Beach.
- [52] The work that was done to repair the leaking refrigeration system however, is work that benefited both Millennium and Savilles, as that connected to, and involved both the areas that were used separately by Savilles, and those areas that were used in conjunction with Millennium.
- [53] The work to repair the leaking refrigeration system was to repair the pre-existing services to the building. In the usual course of events, if a lessee was leasing premises with particular infrastructure attributes, such as air-conditioning, it would be a normal expectation that the lessor would maintain the building, together with its attributes.
- [54] In the absence of explicit lease terms, liability for a lessee to maintain and improve the infrastructure of a building such as air-conditioning (which would be seen as fixtures) would not be assumed.
- [55] The history of the premises, being used variously for butchery purposes and pet food purposes, indicates that the premises had been fitted out for commercial uses requiring refrigeration. The age of the existing refrigeration system indicates that this has been a long-standing use of the premises, predating the lease to Archibald.
- [56] Pebble Beach has obtained benefit by the work done to repair the leaking refrigeration system, as it is maintenance and improvement of its existing fixtures, and puts the premises in a state where they can be leased specifically to businesses seeking those facilities.
- [57] Mr Saville said in evidence that Savilles was using the building at the time of the hearing as a refrigerated area, and was still cooking the hams there.
- [58] Pebble Beach takes issue with a liability to pay for refrigerant gas which was lost in the process of repair, and says that Pebble Beach obtained no benefit from that component.<sup>20</sup> That cost however was incurred in the course of repairs, and as a consequence of the repair process.
- [59] There is no evidence as to how much of the refrigerant gas was lost in any event. Mr Saville said in evidence that he did not know how much refrigerant gas was replaced.
- [60] There is no supported suggestion that Fridgy was negligent in performing the work, or that the work was defective. Fridgy has obtained and installed the refrigerant gas

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<sup>20</sup> Submissions on behalf of the first respondent filed 20 May 2019 at [55(a)].

in the normal course of work, and that component should not be severed, even though Pebble Beach obviously does not have the current benefit from the lost refrigerant gas.

- [61] A claim for unjust enrichment is not found in contract, but in equity.
- [62] The submissions by Pebble Beach as to discussion of a quantum meruit claim in *Pavey & Matthews v Paul*,<sup>21</sup> which referred to a requirement for there to be an enforceable contract, are not applicable to a claim for unjust enrichment, which is not based on contract.
- [63] The High Court noted in *Equuscorp*<sup>22</sup> that a claim for unjust enrichment is based on notions of fairness, and is not confined by consideration of contract:

[32] As Gummow J pointed out in *Roxborough v Rothmans of Pall Mall Australia Ltd*, failure of consideration for the purpose of a claim for money had and received is not confined by contractual principles.

In that case there had been no failure of performance by Rothmans of any promise it had made. There was no question of repudiation by it of its contractual obligations. The question was whether it was “unconscionable” for Rothmans as the recipient of payments to retain them in circumstances in which it was not specifically intended or especially provided that it should so enjoy them. The question of unconscionability, as his Honour explained, derived from the general equitable notions which found expression in the common law count for money had and received.

This court acknowledged in *Australia and New Zealand Banking Group Ltd v Westpac Banking Corporation* that “contemporary legal principles of restitution or unjust enrichment can be equated with seminal equitable notions of good conscience” albeit the action itself is not for the enforcement of a trust. The reference to conscionability in this context, however, does not mean that whether enrichment is unjust is to be determined by reference to a subjective evaluation of what is fair or unconscionable. As the court reiterated in *Farah Constructions Pty Ltd v Say-Dee Pty Ltd*:

recovery rather depends on the existence of a qualifying or vitiating factor falling into some particular category. (footnote omitted)

- [64] I consider that Pebble Beach has been enriched by the work of Fridgy in relation to the repairs to the leaking refrigeration system, which it was aware of and sanctioned, and has benefited from, and that a claim in unjust enrichment is made out.
- [65] As previously discussed, I am not satisfied that effective service of the application was made on Millennium and make no order in relation to the claim against it.
- [66] I find that Pebble Beach has liability for that part of the work that it has been enriched by, in the amount of \$13,980.34 (Invoice #2407).
- [67] I order that Pebble Beach pay to Fridgy the amount of \$13,980.34.

### Costs

- [68] Fridgy has applied for \$326.00 as filing costs.<sup>23</sup>

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<sup>21</sup> (1987) 162 CLR 221.

<sup>22</sup> *Equuscorp Pty Ltd (formerly Equus Financial Services Ltd) v Haxton* (2012) 246 CLR 498.

<sup>23</sup> Applicants submission for 3 May 2019 at [63].

- [69] Pebble Beach seeks costs against Fridgy.<sup>24</sup> Pebble Beach submits that Fridgy has made false assertions that Pebble Beach had failed to pay an amount for services rendered, and that costs should be allowed where a person conducts proceedings under false assertions for a collateral purpose (referring to *Fisher v Wenzel & Anor*<sup>25</sup>).
- [70] The basic proposition as to costs in the Tribunal, as set out in s 100 of the QCAT Act is that each party to a proceeding must bear their own costs for the proceeding. That proposition can be departed from if the Tribunal considers the interests of justice require it to make an order as to costs (s 102 of the QCAT Act).
- [71] In this matter Fridgy has partly succeeded in its claim against Pebble Beach, and Pebble Beach has partly succeeded in its defence of the claim. In those circumstances, I do not consider it appropriate to depart from the basic proposition that each party bear their own costs, and make no order as to costs.

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<sup>24</sup> Submissions on behalf of the first respondent on 24 May 2019 at [12].

<sup>25</sup> (2016) QCAT 56.