

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *David Wright Properties Pty Ltd v Lockett* [2024] QCAT 154

PARTIES: **DAVID WRIGHT PROPERTIES PTY LTD**
(applicant)

v

COURTNEY LOCKETT
(respondent)

APPLICATION NO/S: BDL247-22

MATTER TYPE: Building matters

DELIVERED ON: 18 April 2024

HEARING DATE: On the Papers

HEARD AT: Brisbane

DECISION OF: Member Munasinghe

ORDERS: **Courtney Lockett must pay David Wright Properties Pty Ltd the amount of \$34,722.40 within 14 days of the date of this order.**

CATCHWORDS: CONTRACTS – BUILDING, ENGINEERING AND RELATED CONTRACTS – RENUMERATION – RECOVERY – where applicant alleged monies due and owing under contract – where respondent contends applicant’s invoice exceeded quotation.

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – where failure by respondent to comply with tribunal directions – where respondent was a legal practitioner – where respondent ought to have known the consequences of not complying with Tribunal directions - where applicant entitled to final decision.

Queensland Building and Construction Commission Act 1991 (Qld), s 77, Schedule 1B, s 1, s 4

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 28, s 48

APPEARANCES & REPRESENTATION: 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] The applicant, David Wright Properties Pty Ltd, makes claim in the Tribunal for \$34,722.40, an amount it contends Courtney Lockett did not pay for building work it performed for her.

Background

- [2] On 1 February 2021, the applicant gave Ms Lockett a quotation to demolish her house and remove any remaining rubble and debris (*'work'*). The price of the work stated in the quotation was \$22,800. The quotation further stated that Ms Lockett would be charged the Queensland Government Waste Disposal Levy (*'levy'*).
- [3] On 6 September 2021, the respondent signed a document titled 'Acceptance of Quotation', stating that she agreed to pay the levy at a rate of \$92, which would be charged to the applicant's final invoice. The quotation further stated any removal of contaminated waste not provided for in the quotation would be 'extra'.
- [4] Also, on 6 September 2021, Ms Lockett paid the applicant a deposit of \$2,800.
- [5] On 27 October 2021, after completing the work, the applicant gave Ms Lockett an invoice totalling \$34,722.40, comprised of:
- (a) \$22,800 for the demolition work (less the deposit already paid);
 - (b) \$10,381.28 for the Government Waste Levy; and
 - (c) \$4,341.12 for removing asbestos contaminated waste.
- [6] Between 12 July 2022 and 21 July 2022, Ms Lockett sent the applicant a series of emails indicating that she did not intend to pay the invoice because:
- (a) whilst she was quoted \$92 per tonne for waste removal, no estimate was provided as to how many tonnes may be required to complete the work;
 - (b) if the applicant had provided her with an estimate for the amount of waste, she would have engaged a fixed fee or cheaper company;
 - (c) she was only prepared to pay the applicant \$22,800 for the demolition and \$4,341.12 for asbestos removal.

Jurisdiction

- [7] The Tribunal has jurisdiction to hear domestic building disputes.¹ A domestic building dispute, *inter alia*, means:
- (a) a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work; or
 - (b) a claim or dispute in negligence, nuisance or trespass related to the performance of reviewable domestic work other than a claim for personal injuries.
- [8] I am satisfied the Tribunal has jurisdiction to hear this dispute because:

¹ *Queensland Building and Construction Commission Act 1991* (Qld), s 77, Schedule 2 Dictionary.

- (a) Ms Lockett is a building owner, within the meaning of Schedule 1B, s 1 of the *Queensland Building and Construction Commission Act 1991* (Qld) ('QBCC Act').
- (b) David Wright Properties Pty Ltd is a building contractor within the meaning of Schedule 1B, s 1 of the QBCC Act.
- (c) The work the applicant was contracted to perform was reviewable domestic work within the meaning of s 4 of the QBCC Act, because it involved the renovation, alteration, extension, improvement, or repair of a home.

Early end to a proceeding

- [9] The Tribunal may bring a proceeding to an early end if it considers a party to a proceeding is acting in a way that unnecessarily disadvantages another party including by not complying with a Tribunal order or direction without reasonable excuse.² In those circumstances the Tribunal may, if the party causing the disadvantage is not the applicant, make its final decision in the proceeding in the applicant's favour.

Ms Lockett's failure to comply with Tribunal directions

- [10] On 14 September 2022, the Tribunal directed Ms Lockett to file a response to the application. She failed to do so. On 4 January 2023, the Tribunal again directed Ms Lockett to file a response. She didn't. Finally, on 27 February 2023 the Tribunal made a direction that if Ms Lockett did not file a response the applicant will be entitled to a final decision. Ms Lockett did not comply. In fact, Ms Lockett has not responded to the application or engaged with the Tribunal in any way whatsoever. Accordingly, I find that Ms Lockett has failed to comply with Tribunal directions without reasonable excuse. I consider her conduct has unnecessarily disadvantaged the applicant by delaying final resolution of the proceeding. Pursuant to s 48(2) (b)(i) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), I intend to make a final decision in the proceeding in the applicant's favour.
- [11] Section 48(2) of the QCAT Act requires that, before making such an order, the Tribunal must have regard to:
- (a) the extent to which the party causing the disadvantage is familiar with the Tribunal's practices and procedures;
 - (b) the capacity of the party causing the disadvantage to understand, and act on, the Tribunal's orders and directions;
 - (c) whether the party causing the disadvantage is acting deliberately.
- [12] Ms Lockett sent emails to the applicant from an address containing the name of a law firm named 'Lockett McCullough'. That firm's website indicates that Ms Lockett is a Principal of the firm.³ The website purports that Ms Lockett has 'practised law for several years'. Accordingly, I am comfortably satisfied that Ms Lockett would be familiar with the Tribunal's practices and procedures. Ms Lockett must have known the deleterious consequences that would ensue from not

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 48(1)(a).

³ Lockett McCullough Lawyers, Courtney Lockett (webpage)
<https://lockettmcullough.com.au/courtney-lockett/>.

complying with Tribunal directions. Even if Ms Lockett was not experienced in conducting proceedings in the Tribunal, as a lawyer of several years standing she ought to have appreciated the need, in civil litigation, to respond to allegations raised by a claimant.

- [13] I am also satisfied that as an experienced practicing lawyer Ms Lockett had capacity to understand and act on the Tribunal's directions. It would appear she simply ignored the Tribunal's directions in the hope that the claim brought against her would go away.
- [14] Concerning my consideration of material on the Lockett McCullough website, it ought to be noted that the trier of fact in a civil proceeding ordinarily abstains from conducting their own enquires. However, in this case, Ms Lockett's refusal to engage with the Tribunal warrants a more inquisitorial approach. The QCAT Act permits such an approach. Notably, s 28(3)(c) of the QCAT Act provides that in conducting a proceeding, the Tribunal may inform itself in any way it considers appropriate. I also considered *Weinstein v Medical Practitioners Board of Victoria* [2008] VSA 19, where the Court of Appeal upheld the validity of a Google search conducted by the tribunal of fact.
- [15] It can be inferred that Ms Lockett knows about the proceeding because a licenced process server gave her a copy of the application.⁴ Her repeated failure to comply with Tribunal directions can only be interpreted as a deliberate attempt to disadvantage the applicant in the misguided hope of avoiding adverse findings against her.

On the merits decision

- [16] Even if I did not proceed pursuant to s 48 of the QCAT Act, and instead decided the application on its merits, I would find in the applicant's favour. Many cases that come before the Tribunal are complex and nuanced. This is not one of them. At its core, it is simply a case about a building owner unreasonably refusing to pay for services faithfully and competently rendered to them. I find that the 'acceptance of quotation document' amounts to a written contract between the applicant and Ms Lockett. She signed the contract and did so willingly and with her 'eyes wide open'. By signing the contract, Ms Lockett accepted that she would be responsible for paying the levy at a rate of \$92 per tonne. She cannot now resile from that written promise. It is implicit from the terms of the contract that the levy could only be calculated at the conclusion of the work. If Ms Lockett wanted certainty about the final contract price she should have contracted with a different company.
- [17] For the reasons set out above, I order that Courtney Lockett must pay David Wright Properties Pty Ltd the amount of \$34,722.40 within 14 days of the date of this decision.

⁴ See the Affidavit of Service of Kevin Nott dated 26 September 2022.