

**CITATION:** *AsteQ Global Pty Ltd v Stice Enterprises Pty Ltd* [2011] QCATA 100

**PARTIES:** AsteQ Global Pty Ltd (ACN 099 357 392)  
trading as AsteQ Global  
v  
Stice Enterprises Pty Ltd trading as RE/MAX  
Excellence

**APPLICATION NUMBER:** APL376-10

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** Justice Alan Wilson, President

**DELIVERED ON:** 7 April 2011

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **Leave to appeal refused.**

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – where appellant signed appointment of real estate agent which included marketing campaign – where appellant did not pay for marketing campaign – where respondent terminated marketing campaign – where leave to appeal is sought – whether leave to appeal should be granted

*Queensland Civil and Administrative Tribunal  
Act 2009*

## **APPEARANCES and REPRESENTATION (if any):**

This matter was heard on the papers in accordance with s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

## **REASONS FOR DECISION**

- [1] AsteQ Global listed a house for sale with RE/MAX. As part of the appointment, AsteQ authorised the agent to spend up to \$4,845 on a 'Go for Sold' marketing campaign. RE/MAX commenced the marketing campaign, but AsteQ Global did not pay for the marketing expenses.

### **For more information on QCAT**

- [2] RE/MAX brought proceedings in QCAT's Minor Civil Disputes jurisdiction claiming \$4,230, the actual amount spent. A Magistrate, sitting as an ordinary Member of QCAT in that jurisdiction, found for RE/MAX and ordered AsteQ Global pay it the sum of \$4,230.
- [3] AsteQ Global has applied for leave to appeal the learned Magistrate's decision. The grounds advanced are that:
- [a] Contrary to instructions, RE/MAX ran advertisements without nominating a sale price for the property;
  - [b] It was a condition of the 'Go for Sold' agreement that payment was required prior to the placement of the first advertisement. Contrary to that agreement, RE/MAX placed an advertisement before being paid;
  - [c] AsteQ Global did not approve the advertising proofs or the dates on which the advertising was to be run;
  - [d] The witnesses who gave evidence on behalf of RE/MAX were in error about certain dates and misconstrued the effect of some email communications between AsteQ Global and RE/MAX;
  - [e] AsteQ Global has not received copies of any invoices from suppliers of services to RE/MAX in relation to the 'Go for Sold' campaign;
  - [f] RE/MAX used the 'free' components of the advertising campaign so there should be either no cost, or a reduced cost, for the advertising; and,
  - [g] The marketing campaign was ineffective.
- [4] Because the original proceeding was a Minor Civil Dispute, leave is necessary: QCAT Act, s 142(3). Leave to appeal will ordinarily only be granted where there is some question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage; or, there is a reasonably arguable case of error in the primary decision and reasonable prospect that the applicant would obtain further substantive relief. Another question sometimes asked is: is leave necessary to correct a substantial injustice to the applicant, caused by some error?
- [5] Most of the matters now advanced by AsteQ Global have already been raised, and argued, before the learned Magistrate:
- [a] He was shown a copy of the newspaper advertisement which marketed the property without reference to a price<sup>1</sup> and was aware of AsteQ Global's argument.<sup>2</sup>

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<sup>1</sup> Transcript page 27, line 24, page 41.

<sup>2</sup> Transcript page 41, line 8.

- [b] He had a copy of the 'Go for Sold' module package signed by the directors for AsteQ Global. That document states '...agrees to the advertising costs as set out in this "Go for Sold" package at a Total Cost of \$4,848.00 payable prior to the first advertisement being placed...'; and, there was an acknowledgement from RE/MAX that it placed advertising even though AsteQ Global had not complied with its obligations.<sup>3</sup>
- [c] The learned Magistrate also heard evidence that the advertising proofs were sent to AsteQ Global before publication. He heard evidence, too, from RE/MAX that it was not obliged to seek approval for the proofs before placing them.<sup>4</sup>
- [d] In the course of the hearing the Magistrate and Mr Stevenson, a director of AsteQ Global, had a lengthy discussion about the way in which the 'free' component of the advertising worked.<sup>5</sup>
- [e] There was also a discussion about the effect of the email correspondence.<sup>6</sup>
- [f] The learned Magistrate also had a discussion with Mr Stevenson about the fact that the property was still on the market<sup>7</sup> and that although Mr Stevenson may not have been happy with the outcome of the campaign, that did not affect his obligation to pay.<sup>8</sup>
- [6] The discrepancy about dates was not raised at the hearing. AsteQ Global has now, in submissions relating to its application for leave to appeal, filed material intended to show that RE/MAX's representatives were mistaken about the date a V8 Supercar race took place.
- [7] The Tribunal will only accept fresh evidence if a party will suffer substantial injustice if the new evidence is not allowed in, and the evidence was not reasonably available at the time of the hearing (see, for example, ss 137 and 138, QCAT Act).
- [8] AsteQ Global has not demonstrated that the evidence it now seeks to raise and rely upon was not available at the time of the hearing. In any event, given that the efficacy or otherwise of advertising during the Supercar race was discussed at the hearing,<sup>9</sup> nothing turns on it and it cannot be said that it would have affected the learned Magistrate's decision.
- [9] RE/MAX did not, it is true, produce copies of invoices from its suppliers at the hearing. It was not required to do so, however, because the contract

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<sup>3</sup> Transcript page 24, line 13.

<sup>4</sup> Transcript page 31, lines 3-7.

<sup>5</sup> Transcript page 42.

<sup>6</sup> Transcript page 34.

<sup>7</sup> Transcript page 39.

<sup>8</sup> Transcript page 51, line 47.

<sup>9</sup> Transcript page 44.

between the parties set out the work to be done and the price to be paid for each component. The price to be paid was not dependent upon RE/MAX receiving an invoice for that amount.

- [10] Findings of fact by a tribunal will not usually be disturbed on appeal if the facts inferred by the tribunal, upon which the finding is based, are capable of supporting its conclusions, and there is evidence capable of supporting any inferences underlining it<sup>10</sup>. The evidence at this hearing was capable of supporting the learned Magistrate's findings, and I can find no reason to overturn them.
- [11] AsteQ Global has not demonstrated that the learned Magistrate fell into any error of law; there is no question of general importance that requires a decision of the appeal tribunal; and AsteQ Global has not pointed to any substantial injustice which requires that leave to appeal should be granted.
- [12] Leave to appeal is refused.

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<sup>10</sup> *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 197 ALR 201 at 207, 208.