

CITATION: *Davidson v Pool* [2011] QCATA 136

PARTIES: Ms June Davidson
v
Mr David Pool

APPLICATION NUMBER: APL239-10

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Richard Oliver, Senior Member**
Peta Stilgoe, Member

DELIVERED ON: 16 June 2011

DELIVERED AT: Brisbane

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

CATCHWORDS: MINOR CIVIL DISPUTE – where collision in car park – where appellant disputes adjudicator’s finding of fact on causation – whether grounds for leave to appeal

Dearman v Dearman (1908) 7 CLR 549
Fox v Percy (2003) 197 ALR 201
Chambers v Jobling (1986) 7 NSWLR 1

APPEARANCES and REPRESENTATION (if any):

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

REASONS FOR DECISION

Mr Oliver

- [1] In this matter the Appeal Tribunal consisted of Ms Stilgoe, QCAT Member and me. I have had the benefit of reading her reasons in draft. I agree with her reasons, and her conclusions, and the order she proposes.

Ms Stilgoe

- [2] Ms Davidson and Mr Pool were involved in a car accident in a car park. Both parties were reversing from their respective car spaces when they

collided. Ms Davidson brought proceedings in the minor civil dispute jurisdiction of the tribunal claiming \$1,291, the cost of repairs to her car. The learned Adjudicator determined that Ms Davidson was fully to blame for the collision and declined to award her any compensation.

[3] Ms Davidson has appealed the learned Adjudicator's decision. The grounds for appeal appear to be:

- a) The learned Adjudicator did not give proper weight to Ms Davidson's evidence and appeared to be impatient with Ms Davidson.
- b) The learned Adjudicator's comments about procedure were contrary to the advice Ms Davidson had received previously from tribunal officers.
- c) The learned Adjudicator did not read the file as she made no reference to certain correspondence on the file.

[4] Because this is an appeal from a decision of the tribunal in its minor civil dispute jurisdiction, leave is necessary. 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 a 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] 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.¹

[6] An appellate tribunal may interfere, however, if the conclusion at first instance is 'contrary to compelling inferences' in the case.² As the High Court said in *Fox v Percy*:

In such circumstances, the appellate court is not relieved of its statutory function by the fact the trial judge has, expressly or implicitly, reached a conclusion influenced by an opinion concerning the credibility of witnesses. In such a case, making all due allowances for the advantages available to the trial judge, the appellate court must not 'shrink from giving effect to its own conclusion.'³

[7] The transcript shows that the learned Adjudicator considered the evidence about the cause of the collision carefully. She questioned Ms

¹ *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 197 ALR 201 at 207, 208.

² *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.

³ *Fox v Percy* (supra) at 128 per Gleeson CJ, Gummow and Kirby JJ.

Davidson at length about how the accident came about;⁴ she read the statement from Ms Davidson's independent witness and compared that evidence with Ms Davidson's direct testimony⁵. The learned Adjudicator found that because there was a conflict between Ms Davidson's evidence and that of her witness, and because the damage suffered by the vehicles did not support Ms Davidson's version of events, she preferred the evidence of Mr Pool. I have read the transcript carefully and considered the documentary evidence presented to the tribunal. The evidence is capable of supporting the learned Adjudicator's findings and I can find no compelling reason to make a different finding.

- [8] Ms Davidson's contention that the learned Adjudicator "sighed" when she could not readily find copies of material is, of course, not evident from the transcript. The minor civil dispute jurisdiction of the tribunal is a busy one and tribunal members are often under pressure to hear and determine multiple cases in one day. It is easy to become frustrated when a proceeding does not run smoothly and it may be difficult to refrain from expressing that frustration. Nevertheless, parties are entitled to be treated with respect and given a full opportunity to present their case. If the learned Adjudicator expressed frustration as Ms Davidson asserts, it has not otherwise affected her conduct of the proceedings as both parties were given an opportunity to present their case and there is no evidence that the learned Adjudicator was biased against Ms Davidson.
- [9] Ms Davidson is clearly dissatisfied with Mr Pool's conduct prior to the hearing, the adjournments, and apparently conflicting information given to her by tribunal officers. None of these factors affected the conduct of the proceedings before the learned Adjudicator. Although Ms Davidson says she was told that she needed only one quote, and the learned Adjudicator called for three quotes, the fact is that three quotes were presented at the hearing. In any event, because of the learned Adjudicator's findings about liability, the amount of the claim was not in issue.
- [10] Ms Davidson says that the learned Adjudicator could not have read the file because she was not aware of a letter from Mr Pool's representatives. The letter attaches a statement and submissions. The transcript does not assist Ms Davidson on this point as there is no evidence that the learned Adjudicator had not read the document. The confusion about copies of quotes⁶ lies with Ms Davidson being unable to produce copies of the quotes that are referred to in the document Ms Davidson says that the learned Adjudicator did not read. Even if Ms Davidson is correct in her assertion that the learned Adjudicator did not read the file beforehand, the learned Adjudicator made a decision based on the evidence presented to her on the day and, therefore, nothing turns on this point.

⁴ Transcript pages 5-7.

⁵ Transcript page 11.

⁶ Transcript pages 8-9.

- [11] There is no question of general importance in this proceeding which requires a decision of the appeals tribunal; there is no error in the learned Adjudicator's decision; there is no reasonable prospect that Ms Davidson will obtain substantive relief on appeal and there is no substantial injustice. Leave to appeal should be refused.