

CITATION: *Preston and Anor v Fast Forward Construction Pty Ltd* [2011] QCATA 137

PARTIES: Alexander Preston and Robyn McIntyre
v
Fast Forward Construction Pty Ltd t/a
Advance Maintenance Service

APPLICATION NUMBER: APL242-10

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

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

DELIVERED ON: 21 June 2011

DELIVERED AT: Brisbane

ORDERS MADE:

1. **Leave to appeal is refused.**
2. **The application by Alexander Preston is struck out.**

CATCHWORDS: Minor Civil Dispute – where Tribunal made specific findings of fact – where no compelling reasons to disturb those findings of fact – no error of law or fact – where applicant Alexander Preston not a party to the minor civil dispute proceeding

Queensland Civil and Administrative Tribunal Act 2009, s 142(3)

QUYD Pty Ltd v Marvass Pty Ltd [2009] 1 Qd R 41
Fox v Percy (2003) 197 ALR 201

APPEARANCES and REPRESENTATION (if any):

This matter was heard on the papers, pursuant to section 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

REASONS FOR DECISION

- [1] The Respondent trades as Advance Maintenance Service and is a supplier of plumbing and associated services. Ms McIntyre, presumably, is the owner of a residential property at 15 Wisemans Court, Oyster Cove. Between 20 April 2009 and 23 April 2009, Advance carried out plumbing work at the request of Ms McIntyre at the property.
- [2] At the conclusion of the work Advance rendered an invoice to Ms McIntyre for \$1,931.00. Payment was not made for a considerable period of time. Ultimately after a discussion between Ms Rodgers, an employee of Advance, and a Mr Preston (presumably Ms McIntyre's partner) it was agreed that a discount to the original account would be offered for immediate payment. The account was reduced to \$1,519.00.
- [3] Despite that agreement, no payment was received for the balance sum and by letter of 25 November 2009, Ms McIntyre was put on notice that Advance intended to commence legal proceedings to recover the outstanding balance of \$1,931.00 less that payment of \$750.00. That is, \$1,181.00. Despite that notice, Ms McIntyre still refused to pay the agreed discounted amount and the Minor Civil Dispute proceeding was commenced in the Tribunal against Ms McIntyre. I should point out here, that it was not until 27 November 2009 did Ms McIntyre make any complaint about the quality of work undertaken by the Respondent.
- [4] The matter came on for hearing before a Tribunal Adjudicator on 24 August 2010 where both parties were given an opportunity to present their respective cases. Ultimately, in detailed written reasons, the learned Adjudicator came to the opinion that Advance was entitled to recover the outstanding sum together with a filing fee and interest. The total amount payable by Ms McIntyre was \$1,421.00.
- [5] Although, at the commencement of the hearing Ms McIntyre purported to produce a counterclaim, it was deficient in particulars to quantify the claim being made. This issue was raised with Mr Preston (who appeared with Ms McIntyre) quite specifically and despite these deficiencies, he elected to press on with the hearing. The transcript reveals that Mr Preston, and Ms McIntyre were given every opportunity to present the case despite the deficiencies in their evidence.
- [6] Having heard both parties, the learned Adjudicator was not satisfied that the counterclaim had been made out, said that it was without merit, and that there was no evidence whatsoever to support Ms McIntyre's contention that she had overpaid the invoices to Advance in the sum of \$1,000.00.
- [7] The learned Adjudicator made quite specific findings that Advance had attended Ms McIntyre's premises, performed all of the work as requested, did so in a professional and responsible manner, and was not satisfied that any of the work it performed was defective. She acknowledged that there was a problem with a tap not working satisfactorily in the bathroom but this was a tap specifically purchased by Ms McIntyre, installed by Advance, and

in fact, had been adjusted by Advance on a maintenance call without any cost to Ms McIntyre.

- [8] In so far as credit issues were concerned, the learned Adjudicator accepted the evidence of Ms Rodgers and Mr Hilton in preference to the evidence of Ms McIntyre and Mr Preston and those credit findings are quite specific and set out in her reasons.
- [9] From that decision, Ms McIntyre and Mr Preston filed an application for leave to appeal or appeal in the Tribunal on 5 October 2010. It is unclear why Mr Preston is an applicant in the appeal. He was not a party to the proceeding below and no order has been made against him. He has no standing to bring this application, even as a joint applicant. In these circumstances it is appropriate that the application for leave to appeal or appeal by him be struck out.
- [10] As this is an appeal from a Minor Civil Dispute, leave of the Appeal Tribunal is necessary.¹ Leave will only be given if there is an arguable case of error on the part of the primary decision maker.² Is there a reasonable prospect that the Applicant will obtain substantive relief. 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?
- [11] Leave will not be granted to simply re-agitate the very issues upon which the learned Adjudicator has made a decision.
- [12] In the application, Ms McIntyre's grounds for appeal are:

"1. The Tribunal decisions were wrong in law and contrary to;

(a) Trade Practises Act;

(b) Queensland Building Services Authority Act 1991;

(c) Domestic Building Contracts Act 2000.

2. The Tribunal failed to make and forward a decision relating to the Cross Applicants Claim".

- [13] In respect of ground two it is clear from the transcript that the learned Adjudicator did give consideration to that counterclaim and made specific findings. Those findings are, to a limited degree but sufficient for the purposes of this appeal, set out above. Furthermore, the transcript also shows that during the course of the hearing, the counterclaim and it's

¹ Section 142(3).

² *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

deficiencies were specifically discussed with Mr Preston so there could be no doubt that he was aware as to why it could not succeed.

- [14] In the written submissions filed in support of the application, the question of the counterclaim was not specifically addressed. The point is that although there was general complaint about the outcome, and in the opinion of the Applicant, the outcome was incorrect, no error on the part of the learned Adjudicator has been identified other than she came to a conclusion contrary to the Applicant's expectations. This is not a basis upon which leave to appeal will, or can, in accordance with principle, be granted.
- [15] With respect to the other grounds of appeal which are set out in the submissions, the learned Adjudicator, in her reasons, made specific findings of fact concerning the application of the *Trade Practices Act*, *Fair Trading Act* and the *Domestic Building Contracts Act*. Any breach of those Acts on the part of Advance, if made out, would sound in damages which must be proved to the Tribunal's satisfaction.
- [16] Reliance was placed on a report from the next door neighbour, who was assisting Ms McIntyre and Mr Preston. This evidence was not accepted by the learned Adjudicator, as she was entitled to do. In fact, Ms McIntyre was given an opportunity to file an independent expert report to support their counterclaim and the cost, if any, of rectification but chose not to do so. The learned Adjudicator was quite specific in respect to Mr Jones's report in saying that:

"In relation to the content of the statutory declaration I find none of it useful and I can not rely upon it at all to support the contentions made by the Respondent, in that the plumbing works were defective and that there were works that were required to be done. The statutory declaration of Christopher Jones does not support the Respondent's case, nor prove that there were (sic) defective work in the performance of the work undertaken by the applicant company".³

- [17] There is nothing in the submissions of the Applicants or any evidence in the proceeding which would warrant this Appeal Tribunal disturbing the learned Adjudicator's findings of fact, which were open on the evidence before her.⁴
- [18] It seems clear from the submissions made by Ms McIntyre that she is asking this Appeal Tribunal to reconsider the dispute afresh rather than identify any error on the part of the Tribunal below. That is not this Appeal Tribunal's function. As I have indicated, leave will only be granted if there is some error identified on the part of the learned Adjudicator. No error is demonstrated by Ms McIntyre and none is apparent. Further the application does not meet any of the criteria referred to in paragraph 10. Therefore, leave to appeal must be refused.

³ Reasons page 4 line 43.

⁴ *Fox v Percy* (2003) 197 ALR 201 at 207-208.