

**CITATION:** *Burridge v Sullivan* [2012] QCATA 99

**PARTIES:** Jeff Burridge  
(Applicant/Appellant)  
v  
Lyle Sullivan  
(Respondent)

**APPLICATION NUMBER:** APL025-12

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

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

**DELIVERED ON:** 6 June 2012

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. Application for leave to appeal refused.**

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – MINOR DEBT– VERBAL CONTRACT DISPUTE – where the Appellant and Respondent entered into a verbal agreement whereby the Respondent would construct a trailer for the Appellant – where the agreement was constituted by a number of verbal conversations between the Appellant and the Respondent – where the Respondent claimed he had not been properly paid for his work – where the learned Magistrate ordered the Appellant pay the Respondent in the sum of \$3,614.98 for materials and labour – where the Appellant seeks leave to bring an appeal against the decision – whether the Appellant was denied a fair hearing – whether the findings of the learned Magistrate were consistent with the evidence before him

*Queensland Civil and Administrative Tribunal Act 2009*, ss 32, 142

*Attorney-General v Kehoe* [2001] 2 Qd R 350  
*Commissioner of Taxation v Baffsky* (2001) 122 A Crim R 568

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

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

**REASONS FOR DECISION**

- [1] Mr Sullivan agreed to construct a trailer for Mr Burrige using, in part, some materials removed from a vehicle Mr Burrige owned. Claiming that he had not been properly paid for his work, Mr Sullivan later brought proceedings in QCAT's Minor Civil Disputes jurisdiction for \$4,159.00.
- [2] After a hearing before a Magistrate sitting as a QCAT Member on 1 December 2011, it was ordered that Mr Burrige pay Mr Sullivan \$3,614.98, plus \$95.00 for QCAT filing fees.
- [3] Mr Burrige seeks leave to bring an appeal against that decision. Leave is necessary before the appeal can proceed: QCAT Act, s 142(3)(a)(i). By direction of the Appeal Tribunal, the application for leave (and the appeal, if leave is granted) are to be determined on the papers, with written submissions from each party.
- [4] Mr Burrige's submissions, prepared by his solicitors, assert that the learned Magistrate made a number of errors that warrant a grant of leave, the upholding of the appeal, and a re-hearing. Those errors are said to be:
  - 1) Giving too much weight to the verbal and written evidence of Mr Sullivan, to the exclusion of Mr Burrige's evidence.
  - 2) Receiving in evidence, and relying upon, receipts produced by Mr Sullivan which Mr Burrige has not seen before the hearing, and about which he was unable to make submissions.
  - 3) Failing to seek evidence from Mr Burrige about those receipts.
  - 4) Wrongly accepting Mr Sullivan's evidence that he was to be paid an agreed hourly rate of \$50.00 for his labour, despite previous evidence that he had done other work for Mr Burrige at an agreed rate of \$40.00.
  - 5) Failing to allow Mr Burrige the proper opportunity to make verbal submissions on his own behalf.
  - 6) Wrongly finding that a total cost for the trailer of over \$5,000.00 was "within the range anticipated by the parties", against Mr Burrige's evidence that Mr Sullivan had represented to him that the total cost would be in the range \$3,000.00-\$3,500.00, inclusive of materials.
  - 7) Making findings against Mr Burrige despite the fact he (Mr Burrige) had not had the opportunity to see the trailer.
- [5] I have listened to the audio recording of the hearing. They do not support Mr Burrige's contentions that he was denied a fair hearing, or taken by surprise. He agreed, both in correspondence which was attached to Mr

Sullivan's original MCD application and in his evidence at the hearing, that he had not, despite invitations from Mr Sullivan, gone out to inspect the trailer because he was too busy to do so.

- [6] Mr Burrige did not – indeed, he could not – dispute that Mr Sullivan had incurred costs for materials and performed work in respect of the trailer. The audio recording shows he was allowed the opportunity to see photographs, and the receipts Mr Sullivan produced, and that the learned Magistrate regularly reverted to him to ensure he had the opportunity to make any submissions, and give any evidence that he wished, as the hearing progressed.
- [7] The primary dispute revolved around Mr Burrige's claim that his original contract with Mr Sullivan was on terms that materials for the job would approximate \$1,500.00, and that the total cost inclusive of materials and labour would be between \$3,000.00 and \$3,500.00. Mr Sullivan denied that and said it was impossible for him to estimate the ultimate cost before the work began, and said he had only represented that he would do the job "as cheaply as I can".
- [8] The learned Magistrate accepted that Mr Sullivan has performed work and purchased materials which directly related to the trailer and the agreement between the parties. He very carefully traversed Mr Sullivan's receipts for materials, and disallowed some items.
- [9] He said, in his Reasons, that the parties had entered into a "arrangement of sorts" which was not "rock-solid" but involved, he accepted, terms that materials would cost around \$1,500.00, and that Mr Sullivan would otherwise be paid an hourly rate of \$50.00.
- [10] Those Reasons, given orally, are short, but sufficient for it to be clear that he preferred Mr Sullivan's evidence to that of Mr Burrige and, in particular, that he accepted that the parties had entered into an agreement under which Mr Sullivan would construct a trailer for which the materials would cost around \$1,500.00 and for which he would otherwise be paid \$50.00 per hour for his labour, with no representation from Mr Sullivan or agreement on his part about an upper limit for the price.
- [11] While it might be said that, as a matter of general principle (and sensible business dealing), parties are unwise to enter into agreements that are "open-ended" in this way, transactions of this kind are hardly unknown to the law. The learned Magistrate's findings, while terse, were consistent with the evidence before him and he was entitled, and had sufficient evidence to, make the findings he did.
- [12] The nature and extent of the obligation to provide full reasons varies according to the nature of the case.<sup>1</sup> In QCAT's Minor Civil Disputes jurisdiction, giving immediate oral decisions accords with the spirit and purpose of the *Queensland Civil and Administrative Tribunal Act 2009*.
- [13] Those decisions will not be subjected to criticism that fails to acknowledge the circumstances in which they are given, or the pressure of the

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<sup>1</sup> *Attorney-General v Kehoe* [2001] 2 Qd R 350 at 356; *Tully v McIntyre* [2001] 2 Qd R 338.

adjudicator's caseload. That approach is not exclusive to the Minor Civil Disputes jurisdiction, or the work of adjudicators; as Spigelman CJ remarked in *Commissioner of Taxation v Baffsky*<sup>2</sup>,

"It is not appropriate to parse and analyse judgments given on an *ex tempore* basis by judges of the District Court, who have a considerable caseload."

- [14] Nothing in the audio recording suggests the learned Magistrate was anything other than careful to ensure that both parties has the opportunity to give any evidence and make any submissions they wished, or to satisfy himself that Mr Sullivan, in particular, was able to produce documentary corroboration of his claims for materials. He then proceeded to make a finding about the critical but undocumented terms of the contract between the parties: Mr Sullivan's claimed hourly rate, and whether or not it was a term of the contract that the price would not exceed a certain figure. He chose, it is clear, to prefer the evidence of Mr Sullivan to Mr Burridge in both respects.
- [15] Nothing in the material before the learned Magistrate, or produced in this application for leave to appeal, suggests any error or, in particular, that the findings he made about those matters were not reasonably open. He had the opportunity to hear from both parties; he preferred the evidence of Mr Sullivan; and, he explained why he did so.
- [16] Further, the audio recording shows the Magistrate conducted the proceedings in an exemplary manner, allowing each party ample opportunity to present his evidence, and case.
- [17] There is, then, no apparent error in the primary decision, no basis for concluding that Mr Burridge was not afforded a fair hearing, and nothing to suggest any injustice to him. Nor is there any question of a general importance about which further argument and a decision of the QCAT Appeal Tribunal would be to the public advantage.
- [18] For these reasons, leave to appeal is refused.

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<sup>2</sup> (2001) 122 A Crim R 568 at 578.