QCAT

Queensland Civil and Administrative Tribunal

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| **CITATION:** | *Solahart Mackay & Ors v Summers* [2013] QCATA 113 |
| **PARTIES:** | Solahart Mackay and<br>Valet Mackay and<br>Michael De Pinto<br>(Applicants/Appellants)<br>v<br>Troy Andrew Summers<br>(Respondent) |
| **APPLICATION NUMBER:** | APL311-12 |
| **MATTER TYPE:** | Appeals |
| **HEARING DATE:** | On the papers |
| **HEARD AT:** | Brisbane |
| **DECISION OF:** | **Justice Alan Wilson, President** |
| **DELIVERED ON:** | 17 April 2013 |
| **DELIVERED AT:** | Brisbane |
| **ORDERS MADE:** | **1. Leave to appeal granted.**<br>**2. Allow the appeal, and set aside the decision of the Tribunal of 20 August 2012.** |
| **CATCHWORDS:** | APPEAL – JURISDICTION – MINOR CIVIL DISPUTE – where respondent was employed by applicant – where respondent made claim for outstanding bonuses and commissions under quasi-contract – where Magistrate ordered applicant pay respondent fixed sum – where applicant seeks to appeal that decision – where claim was for fair recompense for work and labour done – whether claim is for a debt or liquidated demand of money – whether the Tribunal has jurisdiction to hear and determine the matter<br><br>*Queensland Civil and Administrative Tribunal Act 2009*, s 12(4)(a), s 13(1), s 142(3)(a)(i), Schedule 3<br><br>*Alexander v Ajax Insurance Co Ltd* (1956) VLR |

436, followed
*J F Hodge Pty Ltd v Brown* [2013] QCATA 036, cited
*Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221, cited
*Spain v Union Steamship Co of New Zealand Ltd* (1923) 32 CLR 138, followed
*White and Carter (Councils) Ltd v McGregor* (1962) AC 413, cited

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

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

**REASONS FOR DECISION**

[1] This matter began in the Minor Civil Disputes ('MCD) jurisdiction of the Queensland Civil and Administrative Tribunal ('Tribunal') as a dispute between Troy Summers and his former employer(s) about bonuses or commission monies which, he said, were owed to him. The matter was complicated because of uncertainty about the identity of the employer(s) and, as is not uncommon in this jurisdiction, questions about the identity of parties where individuals, corporations and business names are involved.

[2] Mr Summers alleged that he had been employed by Michael De Pinto of De Pinto Agencies (or, elsewhere, De Pinto Agencies Pty Ltd). As his submissions in the MCD proceedings show he was also aware, however, that his employment involved some association with businesses called Valet Mackay and Solahart Mackay and, also, a company called Island Refrigeration & Airconditioning Pty Ltd. It seems to have been common ground that Mr Summers worked for one, or some, or all of these entities at various times in 2010, and 2011.

[3] For reasons which were not made entirely clear in the MCD proceedings Mr Summers ceased that employment in 2011. In December 2011, he began proceedings in the Tribunal's MCD jurisdiction seeking orders against Mr De Pinto and De Pinto Agencies Pty Ltd claiming $19,317.72 for outstanding bonuses and commissions arising, he alleged, by virtue of the terms of his contract of employment with that company.

[4] Mr De Pinto and the company filed a response in the MCD proceeding in which it was alleged that Mr Summers' employer, and the correct entity, was Island Refrigeration & Airconditioning Pty Ltd.

[5] Mr Summers then filed an amended application naming Valet Mackay and Solahart Mackay as respondents and, in his new document, inserting after the name of each an ABN number for the company Island Refrigeration & Airconditioning Pty Ltd. The amount he claimed was also reduced to $13,389.72.

[6] The matter came on for hearing in Mackay before a Magistrate sitting as a QCAT Member. Mr Summers gave evidence. The hearing was then adjourned to allow the named respondents to obtain some documents. It resumed on the afternoon of 20 August 2012 and Mr De Pinto gave evidence for Valet Mackay and Solahart Mackay.

[7] The learned Magistrate then delivered a short oral judgment in which he found that Mr Summers had been employed as a salesperson by both Valet Mackay and Solahart Mackay and had ceased working for both '*companies*' (sic) in May 2011. He accepted the submissions of Valet Mackay and Solahart Mackay that there had been no agreement to pay bonuses or commissions to Mr Summers but, nevertheless, awarded a global sum of $10 000.00 for work he said had been performed by Mr Summers for them '*… in expectation of an agreement being reached which would recognise the extra work that he was undertaking and had undertaken in expectation of such an agreement*'.

[8] Mr De Pinto was, however, ordered to pay this sum personally to Mr Summers together with filing fees of $256.00, and interest of $1 000.00.

[9] Unsurprisingly, Mr De Pinto seeks leave to appeal that decision – as do Valet Mackay and Solahart Mackay. Because the decision was made in the MCD jurisdiction, leave to appeal is necessary.[1]

[10] In his submissions, Mr Summers agreed that Mr De Pinto was not a proper respondent, both in light of Mr Summers' own amendment to his earlier MCD application, and on the evidence. It does seem, with respect, that the learned Magistrate may have been lead into error by the fact that, on the file in the Tribunal registry, the names of the original respondents may not have been properly amended to remove Mr De Pinto.

[11] In any event that part of the learned Magistrate's decision involved a clear error causing substantial injustice to Mr De Pinto, and must attract a grant of leave to appeal and an order, in the appeal itself, that the decision be set aside.

[12] That is not, unfortunately, the end of the problems which arise in this matter. There is, the appellants contend, an additional difficulty: the learned Magistrate may have lacked jurisdiction – in particular, Mr Summers claim was not, it is submitted, one which could be adjudicated within the Tribunal's MCD jurisdiction.

[13] Section 12 of the QCAT Act, in concert with the definition of '*minor civil dispute*' in Schedule 3 of that Act, sets the parameters of the Tribunal's jurisdiction to hear and determine minor civil disputes. Mr Summers claim could only fall within that jurisdiction if it was a claim '*… to recover a debt or liquidated demand of money*'.[2]

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1 QCAT Act s 142(3)(a)(i).

2 Ibid s 12(4)(a).

[14] In his reasons the learned Magistrate accepted that there had been no employment agreement or contract between any of the parties and, in essence, that Mr Summers could only seek compensation for work and labour he performed under what is called, in Mr Summers' own submissions, a '*quasi-contract*'. That is, with respect, an old term to describe what the High Court of Australia has clearly indicated is a lawful basis for recovery in cases where the law imposes a general duty to make restitution for unjust enrichment.[3]

[15] While there are cases in which a '*debt*' has been held to arise where a party has performed a contractual obligation (notwithstanding the other party's termination of the contract[4]) the absence of a contract here and, therefore, the absence of any formula or mechanism under a contract by which Mr Summers' claim could be calculated means that, in truth, his remedy was always in the nature of a *quantum meruit* claim, i.e. for fair recompense for work and labour done.

[16] Claims of that kind may be '*liquidated*' if they can be ascertained by a calculation with reference to decided facts or data.[5] That may have been possible here but the learned Magistrate did not attempt it.

[17] There was also another factor operating here, militating against a finding based upon a formula, or calculation: the applicants' claims that any award to Mr Summers should be reduced to compensate his employer(s) for '*mistakes or errors*' in his work, causing them loss.

[18] That proposition was, with respect, impliedly accepted by the learned Magistrate when he said, in his reasons,[6] that he was required to balance Mr Summers' claims against Mr De Pinto's assertions that any assessment of Mr Summers' entitlements (if any) he was obliged in his position to '*… give some recognition to the complaints made by Mr De Pinto*'.

[19] In attempting to exercise the MCD jurisdiction the learned Magistrate was entitled and indeed obliged under the QCAT Act to make orders that he considered '*fair and equitable to the parties for the proceeding in order to resolve the dispute*'.[7] While it is understandable (and, in a sense, laudable) that the learned Magistrate should strive to put an end to disputes like this, the power to make 'fair and equitable' orders when determining an MCD did not, however, invest him with jurisdiction. This is, simply, a case in which the MCD jurisdiction was not called in to play because the nature of the dispute cannot be shaped to fit within the accepted meaning of the term '*debt or liquidated demand*'.[8]

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3 *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221.
4 *White and Carter (Councils) Ltd v McGregor* (1962) AC 413.
5 *Spain v Union Steamship Co of New Zealand Ltd* (1923) 32 CLR 138 at 142; *Alexander v Ajax Insurance Co Ltd* (1956) VLR 436 at 445.
6 Transcript of Proceedings, 20 August 2012, 16.
7 QCAT Act s 13(1).
8 *White and Carter (Councils) Ltd v McGregor* (1962) AC 413.

[20] A want of jurisdiction must, again, attract a grant of leave to appeal and, also, an order that the appeal be allowed.

[21] Although the parties have not raised it there may, also, be another problem arising in any attempt to exercise jurisdiction in the dispute between Mr Summers, and the applicants. It maybe that jurisdiction lies elsewhere because of the provisions of the *Fair Work Act 2009* (Cth).[9] It is, however, unnecessary to decide that matter.

[22] For these reasons leave to appeal must be granted and, in the appeal itself, the appeal must be allowed and the decision of the learned Magistrate must be set aside. The absence of jurisdiction means that the Appeal Tribunal has no power to substitute its own decision, or return the matter to the Tribunal. The parties must, therefore, seek their remedies elsewhere.

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9 See *J F Hodge Pty Ltd v Brown* [2013] QCATA 036.