QCAT

Queensland **Civil and Administrative Tribunal**

CITATION:	*Cleaners v Mead* [2013] QCATA 131
PARTIES:	Mayfair Dry Cleaners (Applicant/Appellant) v Patrick Mead (Respondent)
APPLICATION NUMBER:	APL149-12
MATTER TYPE:	Appeals
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	**Richard Oliver, Senior Member** **Andrew McLean Williams, Member**
DELIVERED ON:	23 April 2013
DELIVERED AT:	Brisbane
ORDERS MADE:	**1. Application for leave to appeal allowed.** **2. Appeal allowed.** **3. Application in Minor Civil Dispute No. 3619/11 dismissed.**
CATCHWORDS:	APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – consumer – whether grounds for leave to appeal – alleged negligence by bailee for reward – reversed onus of proof of negligence – res ipsa loquitur *ASEA Electric (Aust) Pty Ltd v Petersham Transport Co Pty Ltd* (1971) 124 CLR 220 *Mummery v Irvings Pty Ltd* (1956) 96 CLR 99; 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

Richard Oliver, Senior Member

[1] In this matter the Appeal Tribunal consisted of Mr Andrew McLean Williams, QCAT Member, and me. I have had the benefit of reading his reasons in draft. I agree with his reasons, and his conclusions, and the order he proposes.

Andrew McLean Williams, Member

[2] By an application for leave to appeal and appeal filed on 14 May 2012, the applicant, Mayfair Dry Cleaners, now seeks to appeal against a decision made by an Adjudicator on 16 April 2012.

[3] Because this is an appeal from a decision of the Tribunal in its Minor Civil Disputes jurisdiction, leave is necessary. The question whether or not leave to appeal should be granted is usually addressed according to established principles. Is there a reasonably arguable case of error in the primary decision?[1] Is there a reasonable prospect that the applicant will obtain substantive relief?[2] Is leave necessary to correct a substantial injustice caused by some error?[3] Is there a question of general importance upon which further argument, and a decision of the Appeals Tribunal, would be to the public advantage?[4]

[4] The decision of the learned Adjudicator was that the appellant should pay the respondent the sum of $360, within 28 days, referable to four men's business shirts that the Adjudicator found had been damaged when these were sent to the appellant for laundering.

[5] Originally, by his claim filed on 10 November 2011, the respondent (who was then the applicant) had sought recompense in the sum of $900 (together with his $53 QCAT filing fee), or such lesser amount as QCAT determined to be appropriate, in relation to thirteen (13) Abelard brand men's business shirts that had been sent to the appellant for laundering. It was the respondent's case that the appellant had laundered these same shirts on several prior occasions, and that these had always previously been returned to him in an undamaged condition. However, on the last occasion when the respondent had sent his shirts to Mayfair for laundering these were returned to him in an obviously shrunken state, and were no longer able to be worn by him.

[6] Although the respondent contended that all thirteen shirts had sustained damage, he selected the six worst of these and wrote to the appellant, enclosing the shirts, and seeking recompense in the amount of $150, per

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1 *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.
2 *Cachia v Grech* [2009] NSWCA 232 at 2.
3 *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.
4 *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388 at 389; *McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577 at 578, 580.

shirt. In response, the appellant contacted the respondent by email and proposed that the parties utilise a dry cleaning dispute resolution process in the form of an investigative report offered by "Dry Cleaning Complaints and Arbitration Services". The appellant proposed that the respondent should pay for that report in the first instance. In the event that Dry Cleaning Complaints and Arbitration Services determined that the appellant had damaged the shirts, then the appellant offered to refund the full cost of the report, as well as to compensate the respondent for the damaged shirts.

[7] The respondent indicated that whilst he was happy for the appellant to do whatever it may need to do in order to be satisfied that there was not some inherent defect in the shirts; he declined to submit to the protocol suggested. The appellant then made arrangements for the respondent's six shirts to be examined by Dry Cleaning Complaints and Arbitration Services. After that had occurred, the appellant contacted the respondent by e-mail, and advised:

> We have now received the report on your shirts. It confirms we complied with the manufacturer's cleaning instructions. In my opinion liability lies with the manufacturer. If you require a copy of the report the cost is $190. Your shirts will be returned to you tomorrow.

[8] At all material times the appellant has declined to provide the respondent with a copy of the report that it has obtained from Dry Cleaning Complaints and Arbitration Services, unless the respondent first paid the sum of $190.

[9] Once he had received his six damaged shirts back from the appellant the respondent then sent these back to the Abelard manufacturer, Salco Pty Ltd ('Salco'), via the retailer whom had sold the shirts to the respondent, Mitchell Ogilvie. Salco examined the shirts and concluded that the garments had been laundered at too high a temperature, resulting in the garments shrinking by approximately 2cm in body and sleeve length. The respondent then commenced his minor civil dispute application before QCAT, supported by an email from Salco, which states:

> Our review of the 6 shirts returned to us by Mitchell Ogilvie led us to conclude that the washing instructions (clearly visible on the care instructions label) were not followed.
>
> We determined the garments were laundered at a temperature too high for the fabrics to handle; resulting in the garments shrinking approx 2 cm in body and sleeve length.
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> [The emphasis is in the original]

[10] At the hearing on 16 April 2012, the appellant did not dispute that the shirts had shrunk, yet denied that these had been caused to shrink by Mayfair Dry Cleaning. Although the appellant had obtained a report from Dry Cleaning Complaints and Arbitration Services the appellant also maintained that it would not provide a copy of that report to the

respondent, even notwithstanding that these proceedings were now on foot, unless the respondent first paid over the sum of $190. Equally, the appellant declined to put a copy of that report into evidence before the learned adjudicator and would only make available to QCAT the conclusions expressed on the final page of that report.

[11] During the hearing, the respondent argued that the shirts had been laundered several times before without difficulty. However, on this last occasion when the shirts had been returned to him they had shrunk so much that they were now unwearable, such that a reasonable inference could be drawn that something done during the last laundering must have been the cause for it. The respondent, himself a solicitor, submitted that the legal principle of *res ipsa loquitur* ('the facts speak for themselves') was applicable. The respondent also adverted to the appellant being a bailee for reward, which categorisation was clearly accepted by the learned Adjudicator as being correct in these circumstances. I agree with that categorisation. Although not expressly stated by the respondent in argument, the legal effect of that categorisation is the imposition of a duty on the appellant, as bailee, to take care of the shirts in a manner that was reasonable in the circumstances. Peculiar to that relationship, the law also reverses the onus of proof, by requiring the bailee to disprove negligence,[5] which is contrary to the position under the conventional tort of negligence.

[12] Mr Londy, for Mayfair Dry Cleaning, testified under oath that all of Mayfair's washing is done with cold water only, and any steam pressing equipment within the Mayfair factory does not exceed 100°C. Mr Londy further testified that, in light of his laundering approximately 3,000 shirts per week, it is his experience that Abelard Shirts, in particular, have a propensity to shrink in a manner that exceeds the Australian Standard for shrinkage.

[13] The hearing of evidence in this matter took approximately 33 minutes. During the course of argument the respondent confined his claim to just four of the six damaged shirts, by reason of his concession that the Abelard manufacturer had identified other, unrelated manufacturing defects in two shirts, and had compensated him accordingly.

[14] Minor civil disputes are a tribunal of quick despatch. At the end of the hearing, the learned Adjudicator gave short oral reasons within moments of the conclusion of the evidence. In doing so the learned Adjudicator acknowledged that there was no factual dispute that the shirts had shrunk, yet identified (obviously correctly) that there was still an unresolved dispute as to whether this had been the fault of Mayfair Dry Cleaning. The learned Adjudicator then expressed that he accepted the evidence given by Mr Londy regarding the use of only cold water washing and no temperatures within the Mayfair Dry Cleaning exceeding 100°C, and accepted that this evidence refuted the respondent's contention that the damage was caused by the shirts being laundered at

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5 *ASEA Electric (Aust) Pty Ltd v Petersham Transport Co Pty Ltd* (1971) 124 CLR 220.

too high a temperature. Despite accepting that evidence, and before then finding in favour of the respondent, the leaned Adjudicator said:

> …Nevertheless at law[6] these shirts have come back in a damaged state, for what reasons we do not know.

[15] From that part of the decision that has been quoted and emphasised by me above, it becomes clear that the learned Adjudicator determined the matter on a point of law. Only two legal matters were referred to during the hearing of this matter, *res ipsa loquitur*, and the tort of bailment.

[16] In my view, the Latin maxim serves as no more than an unnecessary distraction in the resolution of this dispute. The statement represents no more than a rule of evidence, under which an inference of negligence might be drawn, but it does not necessitate such a finding.[7] *Res ipsa loquitur* does not absolve a plaintiff in any ordinary case of negligence from discharging the onus to prove negligence by the defendant.[8] The maxim serves no role here, because this is *not* a claim under the general law of negligence, instead being one for specific determination pursuant to the law of bailment, wherein the burden of proof falls upon the appellant.[9]

[17] The learned Adjudicator was correct to place no weight on the report from Dry Cleaning Complaints and Arbitration Services in circumstances where the full content and context of it was kept by the appellant from the Tribunal. Nevertheless, and as was always open to him, the learned Adjudicator has still accepted the sworn evidence of Mr Londy, to the effect that nothing done during the appellant's laundering process could have caused the shirts to shrink. At the same time, the learned Adjudicator has not made any finding in favour of the contrary evidence adduced by the respondent from Salco that suggests negligence by the appellant. Given the speculative nature of the Salco report, the learned Adjudicator was quite right to give it no weight in his deliberations. It must be taken therefore that during the hearing the appellant has successfully discharged the reversed onus, such as to have disproved negligence on its own behalf, and that the respondent has not then proved that the shirts shrinking was caused by the appellant. Thus understood, the final result can be seen as one that cannot be reconciled with the actual factual findings of the learned Adjudicator such as to be one that entails a mixed error, of fact and law.

[18] I allow the application for leave to appeal as well as to allow the appeal itself.

[19] Pursuant to s 147(3)(b) of the QCAT Act, I substitute a decision dismissing the original application in Minor Civil Dispute No. 3619/11.

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6 Emphasis included.
7 *Mummery v Irvings Pty Ltd* (1956) 96 CLR 99.
8 Ibid.
9 *ASEA Electric (Aust) Pty Ltd v Petersham Transport Co Pty Ltd* (1971) 124 CLR 220.