QCAT

Queensland **Civil and Administrative Tribunal**

CITATION:	Holder v Knuth [2013] QCATA 79
PARTIES:	Hilton Holder Pearl Holder (Applicant/Appellant) V Peter Knuth Narleen Knuth (Respondent)
APPLICATION NUMBER:	APL003 -13
MATTER TYPE:	Appeals
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	**Peta Stilgoe, Senior Member**
DELIVERED ON:	13 March 2013
DELIVERED AT:	Brisbane
ORDERS MADE:	**1. Leave to appeal refused**
CATCHWORDS:	APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – tenancy – whether grounds for leave to appeal *Chambers v Jobling* (1986) 7 NSWLR 1, cited *Chief Executive Officer, Department for Child Protection v S* [2007] WASCA 230, cited *Cook's Construction Pty Ltd v Stork Food Systems Australasia Pty Ltd* [2008] QCA 322, cited *Croney v Nand* [1999] 2 Qd R 342, cited *Dearman v Dearman* (1908) 7 CLR 549, cited *Fox v Percy* (2003) 214 CLR 118, cited *Kostopoulos v G E Commercial Finance Australia Pty Ltd* , cited

APPEARANCES and REPRESENTATION (if any):

The Appeal Tribunal heard and determined this matter on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

REASONS FOR DECISION

[1] Mr and Mrs Holder were tenants of Mr and Mrs Knuth. They vacated early and filed an application for return of the bond. Mr and Mrs Knuth filed an application for $7,717.50 compensation. The Tribunal heard the two matters together and ordered that Mr and Mrs Holder pay Mr and Mrs Knuth $2,489.24.

[2] Mr and Mrs Holder want to appeal that decision. They say that the hearing was rushed so they did not have the opportunity to point out relevant facts. They dispute the learned Adjudicator's findings of fact.

[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] Mr and Mrs Holder have filed extra evidence with their application. The Appeals Tribunal will only accept fresh evidence if it was not reasonably available at the time the proceeding was heard and determined.[5] Ordinarily, an applicant for leave to adduce such evidence must satisfy three tests. Could Mr and Mrs Holder have obtained the evidence with reasonable diligence for use at the trial? If allowed, would the evidence probably have an important impact on the result of the case? Is the evidence credible?[6]

[5] An application for leave to appeal is not, and should not be, an attempt to shore up the deficiencies of a party's case at the initial hearing. Mr and Mrs Holder have provided no explanation as to why this material was not available earlier. With a little effort on their part, the evidence could have been available at the hearing. I do not accept Mr and Mrs Holder's submissions that they were "rushed". They filed their application first and the hearing was put back from 10 December to 19 December 2012. They knew that the condition of the property would be an issue. They should have prepared their evidence for the hearing.

[6] Mr and Mrs Holder point out that the learned Adjudicator did not accept video evidence of the home. The learned Adjudicator relied on the report from the painter, rather than the photographs Mr and Mrs Knuth provided.

---

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.
5 ss 137 and 138 QCAT Act
6 *Clarke v Japan Machines (Australia) Pty Ltd* [1984] 1 Qd R 404 at 408

The video, or extracts from it, would not have an important impact on the learned Adjudicator's decision. The new evidence should not be admitted and the application for leave to appeal must proceed on the basis of the evidence before the learned Adjudicator.

[7] The Appeals Tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.[7] An appellate tribunal may interfere if the conclusion is 'contrary to compelling inferences' in the case.[8] As the High Court said in *Fox v Percy*[9]:

> 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.[10]

[8] Mr and Mrs Holder's main complaint is the learned Adjudicator ordered compensation for the painting and for damage to the cook top and oven. The transcript shows that the learned Adjudicator took Mr and Mrs Holder's submissions into account. He discounted the claim for painting by 30%[11] because of the age and condition of the paintwork. He discounted the claim for the cook top from $1,000 to $300 and the oven door from $1,000 to $200.[12] The evidence supports the learned Adjudicator's findings and he was entitled to come to those conclusions. There is nothing in the transcript that persuades me the learned Adjudicator should have taken a different view.

[9] There is no question of general importance that should be determined by the Appeals Tribunal. There is no reasonably arguable case that the learned Adjudicator was in error. There is no reasonable prospect of substantive relief on appeal. There is no evidence that a substantial injustice will result if leave is not granted. Leave to appeal should be refused.

---

7 *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125-126.

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

9 (2003) 214 CLR 118.

10 Ibid 128 per Gleeson CJ, Gummow and Kirby JJ.

11 Transcript at approximately 1:32.

12 Transcript at approximately 1:32:45.