

**CITATION:** Crisci v Mahfound [2013] QCATA 99

**PARTIES:** Mr Andrea-Luca Crisci t/as Rolfe VS Roe  
(Applicant/Appellant)  
V  
Mr Nazih Mahfound t/as Quality Fashion  
Design  
(Respondent)

**APPLICATION NUMBER:** APL365 -12

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Peta Stilgoe, Senior Member**

**DELIVERED ON:** 18 March 2013

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. Leave to appeal refused**

**CATCHWORDS:** MINOR CIVIL DISPUTE – whether grounds  
for leave to appeal

*Dearman v Dearman* (1908) 7 CLR 549  
*Fox v Percy* (2003) 214 CLR 118  
*Chambers v Jobling* (1986) 7 NSWLR 1  
*QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd  
R 41  
*Cachia v Grech* [2009] NSWCA 232  
*Glenwood Properties Pty Ltd v Delmoss Pty  
Ltd* [1986] 2 Qd R 388  
*Mclver Bulk Liquid Haulage Pty Ltd v  
Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577

**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 Crisci is a fashion designer. He asked Mr Mahfound to manufacture some sample garments for the upcoming buyer's season. Mr Mahfound did so but Mr Crisci was not happy with the result. He kept ten of thirty samples manufactured and asked Mr Mahfound for a refund and compensation. Mr Mahfound refused so Mr Crisci brought an application in the tribunal. The tribunal dismissed Mr Crisci's claim.
- [2] Mr Crisci wants to appeal that decision. He says that the learned Member did not allow him to demonstrate the full extent of the defects on every garment. He says that the learned Member did not allow him to make and complete statements during the hearing due to time restrictions and Mr and Mrs Mahfound constantly interrupting, over-talking and yelling. He says that the learned Member erred in allowing Mrs Mahfound to act as Mr Mahfound's interpreter. Finally, Mr Crisci says that the learned Member erred in determining the terms of the agreement.
- [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?<sup>1</sup> Is there a reasonable prospect that the applicant will obtain substantive relief?<sup>2</sup> Is leave necessary to correct a substantial injustice caused by some error?<sup>3</sup> Is there a question of general importance upon which further argument, and a decision of the appeals tribunal, would be to the public advantage?<sup>4</sup>
- [4] Mr Crisci explained the nature of the problem to the learned Member and it is clear from the transcript that the learned Member understood the nature of the complaint.<sup>5</sup> He allowed both parties to lay the samples out on the hearing room floor and explain the problems.<sup>6</sup> Mr Crisci wanted a further opportunity to explain the problems but the learned Member told him that he did not need to see it, as he understood the essence of the case.<sup>7</sup> As the learned Member observed,<sup>8</sup> the quality of the work was not really the issue he had to decide. Mr Crisci was not able to go through every sample to point out the problems but I agree with the learned Member's conclusion that this exercise was not necessary.
- [5] Similarly, there is no basis to Mr Crisci's submission that he was not able to make and complete statements due to time restrictions. The hearing lasted for one hour and twenty minutes. The transcript shows that Mr Crisci spoke to the learned Member, without interruption from Mr and Mrs Mahfound for much of that time. I am satisfied that Mr Crisci had a proper opportunity to put his case to the learned Member and that he took that opportunity.

---

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; *Mclver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577 at 578, 580.

5 Transcript page 2, lines 22-43.

6 Transcript page 23.

7 Transcript page 38 line 36.

8 *Crisci v Mahfound* [2012] QCAT 461 at [18].

- [6] It is true that Mr and Mrs Mahfound interrupted Mr Crisci. But Mr Crisci interrupted Mr and Mrs Mahfound as well. Both sides were at fault and the transcript shows that the learned Member dealt with them even-handedly. As I have already observed, Mr Crisci had the opportunity to put his case without interruption. Mr and Mrs Mahfound's interruptions did not result in any lack of fairness towards Mr Crisci.
- [7] Mrs Mahfound did not appear as Mr Mahfound's translator. She appeared as a witness and as spokesperson for Mr Mahfound. Mr Mahfound asked the learned Member if Mrs Mahfound could talk.<sup>9</sup> Mr Crisci did not take any objection to her participation. It is clear that, although Mr Mahfound was the named respondent, Mr and Mrs Mahfound operated the business as a team. While the conduct of this hearing was somewhat unorthodox, I am satisfied that the learned Member dealt with the dispute in a way that was accessible, fair, just, economical, informal and quick,<sup>10</sup> and that Mr Crisci was not disadvantaged.
- [8] The appeals tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.<sup>11</sup> An appellate tribunal may interfere if the conclusion is 'contrary to compelling inferences' in the case.<sup>12</sup> As the High Court said in *Fox v Percy*:
- 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.<sup>13</sup>
- [9] The learned Member identified<sup>14</sup> that the dispute was a question of credit. He carefully considered the emails that passed between the parties. He found<sup>15</sup> that the email evidence was equivocal and the oral evidence was not persuasive. He also found that Mr Crisci failed to show that the agreement required Mr Mahfound to manufacture finished quality clothes. There is nothing in the transcript that persuades me the learned Adjudicator should have taken a different view of the facts.
- [10] 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.

---

<sup>9</sup> Transcript page 7 line 9.

<sup>10</sup> Queensland Civil and Administrative Tribunal Act 2009 s3(b).

<sup>11</sup> *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125-126.

<sup>12</sup> *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.

<sup>13</sup> *Fox v Percy* (2003) 214 CLR 118 at 128 per Gleeson CJ, Gummow and Kirby JJ.

<sup>14</sup> *Crisci v Mahfound* supra at [19].

<sup>15</sup> Supra at [26].