QCAT

Queensland **Civil and Administrative Tribunal**

CITATION:	Tully v Kenny's Holden Spares [2014] QCATA 92
PARTIES:	Alison Mariee Tully (Appellant) v Mario Logiudice (trading as Kenny's Holden Spares) (Respondent)
APPLICATION NUMBER:	APL027-14
MATTER TYPE:	Appeals
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	**Dr J R Forbes, Member**
DELIVERED ON:	23 April 2014
DELIVERED AT:	Brisbane
ORDERS MADE:	**Leave to appeal is refused**
CATCHWORDS:	APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – CONSUMER DISPUTE – where respondent engaged to make certain repairs to appellant's motor car – whether respondent's work satisfactory – whether respondent's mechanical work caused other defects in the subject car – whether respondent liable for cost of repairing other defects – whether causal link established – whether primary decision-maker's findings involved appellable error – whether leave to appeal should be granted *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 32, s 93, s 142(3)(a)(i) *Fox v Percy* (2003) 214 CLR 118 *Minister for Immigration and Citizenship v SZMDS & Another* (2010) 240 CLR 611 *Robinson v Corr* [2011] QCATA 302 *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014

Thompson and Anor v Jedanhay Pty Ltd [2012] QCATA 246
W (an infant), In re [1971] AC 682

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 (Qld) ("QCAT Act").

REASONS FOR DECISION

[1] The present question is whether the respondent ("Mario") is liable for sundry repairs to a motor car owned by the appellant ("Tully") after Mario worked on the vehicle in September 2012. Did Mario's efforts cause the subsequent faults, or did they have other origins?

[2] The Tribunal found that the essential causal link was not established, and from that decision Tully seeks leave[1] to appeal.

[3] At all material times Tully, a Townsville resident, owned a 1994 model Daihatsu motor car. It needed clutch repairs and a new radiator hose. In or about September 2012 she met Mario, who told her that he had a motor repair business, known as Kenny's Holden Spares ("Kenny's"). He gave her a card (Exhibit 1) advertising Kenny's workshop in Currajong, a Townsville suburb. On or about 17 September 2012, Tully telephoned Mario at that address, and they agreed that he would repair the hose and clutch for $200.

[4] The car was towed to Kenny's, and about one week later Mario rang Tully and told her that those repairs were complete. She went to Kenny's, paid him $220, and took delivery of the car. But as she drove it away she noticed it was "*shaking*". It was then examined by her uncle and another person, who told her that there were bolts missing from the gearbox, and "*nuts and bolts [were] missing everywhere*". There is no evidence that those examiners were qualified motor mechanics.

[5] On 27 September 2012 Tully took the car to Beaurepaires, primarily a motor tyre and wheel alignment business. An employee of that company, a Mr Holmes, gave her a handwritten report (Exhibit 4) dated 27 September 2012, detailing several defects, including a loose wheel nut, damaged tie-rod ends in the steering mechanism, excessive engine noise at idling speed, an inoperative speedometer, and an unsuitable bolt on one of the front brakes. Holmes' report does not state what expertise, if any, that he possessed, and there is no other evidence on that point.

[6] Tully telephoned Kenny's to complain, and a mechanic named Rob assured her that he "*put it back together".* Soon afterwards Mario rang her and asked her to bring the car back for further attention, but she declined to do so.

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1 Leave is required by QCAT Act s 142(3)(a)(i).

[7] Subsequently Tully engaged other mechanics to repair her car, at a total cost (as the Tribunal found) of $5,542.[2] In an application filed on 31 October 2013 she alleges that Mario is liable to pay damages in that amount, and to refund the $220 she paid him in September 2012.

[8] The matter came on for hearing before Registrar Warrington on 8 January 2014. Tully appeared in person; Mario did not appear. Having satisfied herself that Mario was duly notified of the claim and the hearing date, Registrar Warrington proceeded in his absence.[3]

[9] The Registrar found that Mario represented, and Tully reasonably accepted, that he was carrying on business as Kenny's Holden Spares.[4] That was denied by Mario.[5] That denial is contested by Tully in her application for leave – unnecessarily, as the Registrar found that point in her favour.

[10] The Registrar also found that Mario undertook to repair Tully's radiator hose and clutch[6], and that those tasks "*were not carried out to a satisfactory standard, in that they should have lasted for a longer period of time"* so that the $220 paid for them should be refunded.

[11] But the real question, as the Registrar saw it, was one of causation. Did the claimant's evidence establish, on the balance of probabilities, that the defects costing $5,542 to remedy were caused by Mario's treatment of the car?

[12] The Registrar decided that the answer to that question was "No". Accordingly, she dismissed the claim, apart from a refund of $220.

[13] In applying a preliminary "filter" of leave to appeals of this kind, the QCAT Act seeks early finality in resolution of minor civil claims. An application for leave is not an opportunity to re-contest questions of fact or credit that the primary decision-maker is authorised to decide.[7] The appellant must demonstrate an arguable error of law, or that the decision in question appears to have no rational foundation in the evidence. It is not enough for an applicant to express disappointment, or a subjective feeling that justice has not been done.[8] It is not an appellable error to prefer one version of the facts to another, or to give less weight to one party's case than he or she thinks it should receive. Findings of fact will not be disturbed if they have rational support in the evidence, even if another reasonable view is available.[9] Where reasonable minds may differ, a

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2 Transcript of hearing 8 January 2014 ("Transcript") page 13 line 30.
3 QCAT Act s 93.
4 Transcript page 18 line 47 – page 19 line 1.
5 In an application for miscellaneous matters, filed on 10 December 2013.
6 Transcript page 19 lines 1-4; lines 39-43.
7 *Thompson and Anor v Jedanhay Pty Ltd* [2012] QCATA 246 at [28].
8 *Robinson v Corr* [2011] QCATA 302 at [7].
9 *Fox v Percy* (2003) 214 CLR 118 at 125-126.

decision is not erroneous, simply because one conclusion has been preferred to another possible view.[10]

[14] In arriving at her decision the Registrar was aware that in 2012 the car was about eighteen years old. Tully told the tribunal that she had "*just come from Perth"*,[11] although it is not clear that she made the long journey to Townsville in the subject car. Some of the defects that she attributes to Mario's intervention do not seem to be closely related to the parts with which he was concerned – for example, the front brake and the steering mechanism.

[15] More to the point, there is no evidence that Mr Holmes (of Beaurepaires), or Tully's uncle, or his unnamed assistant possessed any relevant expertise. In any event, Holmes does not assert that Mario caused the other defects that he mentions; still less does he give reasons for suggesting such a connection. There is no reason to hold that the Registrar fell into an appellable error when she found:

> [T]here's insufficient evidence that it was because the vehicle wasn't put back together [by Mario] that directly caused these problems. ... Your belief that it was working prior and not after is not sufficient evidence ... you're not a mechanic and there's no reports from a qualified mechanic ... that clearly indicates that these were the cause. So for those reason I can't compensate you for those costs [of $5,542] ... I do, however, find that the works carried out by Kenny's ... were not ... satisfactory, so I'm going to order that ... $220 be refunded to you".[12]

[16] One may add that it was open to the Registrar to find that no indirect or contributory causal link had been established.

[17] I can find no appellable error in the decision under appeal. It is not for this appeals tribunal to canvass findings of fact that the primary tribunal was entitled to make. Accordingly, leave to appeal is refused.

ORDER

[18] **Leave to appeal is refused.**

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10 *Minister for Immigration and Citizenship v SZMDS & Another* (2010) 240 CLR 611 at [131]; *In Re W (an infant)* [1971] AC 682 at 700; *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1025.

11 Transcript page 17 line 23.

12 Transcript page 19 lines 32-43.