

CITATION: *Gent v Hogan* [2015] QCATA 36

PARTIES: Paul Edward Scott Gent
(Applicant/Appellant)
v
Julie Lee Hogan
(Respondent)

APPLICATION NUMBER: APL460-14

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 17 March 2015

DELIVERED AT: Brisbane

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

CATCHWORDS: APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – where claim for repayment of loan – where appellant did not appear at hearing – where tribunal ordered repayment of loan – whether grounds for leave to appeal

Dearman v Dearman (1908) 7 CLR 549

Fox v Percy (2003) 214 CLR 118

Pickering v McArthur [2005] QCA 294

Chambers v Jobling (1986) 7 NSWLR 1

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] On 24 September 2013, Mr Gent received \$9,000 from Ms Hogan. She says it was a loan. Mr Gent says it was payment for building work done on Ms Hogan's house. Ms Hogan filed a claim for return of the \$9,000 plus some other money that she had paid Mr Gent. The tribunal heard the claim on 16 October 2014, in Mr Gent's absence. The tribunal ordered that Mr Gent pay Ms Hogan \$9,000 plus interest and costs.

- [2] Mr Gent applied to reopen the proceeding. He was not successful. He has now filed an application for leave to appeal. The main ground of this application is that he did not have an opportunity to present evidence and he disputes the learned Adjudicator's findings.
- [3] Because this is an appeal from a decision of the tribunal in its minor civil disputes jurisdiction, leave is necessary.¹ Leave to appeal will usually be granted where there is a *reasonable argument* that the decision is attended by error, and an appeal is necessary to correct a *substantial injustice* to the applicant caused by that error.²
- [4] There is no appeal from a decision about a reopening.³ Therefore, Mr Gent's application for leave to appeal must be limited to whether there is an error in the learned Adjudicator's findings of fact.
- [5] The appeal tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.⁴ An appellate tribunal may interfere if the conclusion is 'contrary to compelling inferences' in the case.⁵
- [6] I've read the file and the transcript. There is a withdrawal form for \$9,000 with a notation on the obverse '*Please Pay 9000 to Paul Gent as a loan*'. There is a text message '*...if u can lend the 9 i'll give u 3 back in 2 weeks*'. The evidence can support the learned Adjudicator's findings. There is nothing in the transcript to persuade me that the learned Adjudicator should have taken a different view of the facts. There is nothing to indicate that the learned Adjudicator's findings were contrary to compelling inferences.
- [7] There is no reasonably arguable case that the learned Adjudicator was in error. Leave to appeal should be refused.

¹ QCAT Act s 142(3)(a)(i).

² *Pickering v McArthur* [2005] QCA 294 at [3].

³ QCAT Act s 139(5).

⁴ *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125 – 126.

⁵ *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.