

**CITATION:** *Meiklejohn's Accountants (Qld) Pty Ltd v Chen*  
[2016] QCATA 1

**PARTIES:** Meiklejohn's Accountants (Qld) Pty Ltd  
(Applicant/Appellant)  
v  
Ko-Chin Chen  
(Respondent)

**APPLICATION NUMBER:** APL367 -15

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Senior Member Stilgoe OAM**

**DELIVERED ON:** 4 January 2016

**DELIVERED AT:** Brisbane

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

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – MINOR DEBT – where claim by accountant for debt due – where accountant made error in tax return – where accountant told client tax return would be amended without charge – where accountant rendered further invoice – where tribunal held client not liable for further invoice - whether grounds for leave to appeal

APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – COSTS – where respondent to application for leave to appeal applied for costs – where respondent sought oral hearing on costs application – where respondent submitted new grounds on appeal – where respondent alleged claim lodged unlawfully by agent – whether order for costs appropriate

*Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 3(b), 43(2)(a), 47(1)(b)*

*Dearman v Dearman (1908) 7 CLR 549*

*Suttor v Gundowda Pty. Ltd* (1950) 81 CLR 418  
*University of Wollongong v Metwally (No. 2)*  
 [1985] HCA 28  
*Coulton v Holcombe* [1986] HCA 33  
*Fox v Percy* (2003) 214 CLR 118  
*Pickering v McArthur* [2005] QCA 294  
*Cook's Construction P/L v SFS P/L* (formerly  
 trading as Stork Food Systems Australasia P/L  
 [2009] QCA 075  
*Chambers v Jobling* (1986) 7 NSWLR 1  
*Ascot v Nursing & Midwifery Board of Australia*  
 [2010] QCAT 364  
*Ralacom Pty Ltd v Body Corporate for Paradise  
 Island Apartments (No 2)* [2010] QCAT 412;  
*Grasso v CMG Engineers Pty Ltd (No 2)* [2011]  
 QCATA 326

### **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] Ko-Chin Chen engaged Meiklejohn's Accountants (Qld) Pty Ltd to prepare his tax returns for 2014. Meiklejohn's did that, rendered an invoice, and was paid.
- [2] Dr Chen and Meiklejohn's then had a debate about how Meiklejohn handled some stamp duty he paid. As a result, Meiklejohn's prepared amended returns. It sent Dr Chen another invoice. He did not pay. Meiklejohn's filed a minor debt claim. The tribunal dismissed that claim.
- [3] Meiklejohn's wants to appeal that decision. Because this is an appeal from a decision of the tribunal in its minor civil disputes jurisdiction, leave is necessary.<sup>1</sup> 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.<sup>2</sup>
- [4] Meiklejohn's has two grounds of appeal but there is really only one issue: did the tribunal correctly find that Meiklejohn's undertook to do the amended tax return for no fee?
- [5] The tribunal had a copy of an email from Meiklejohn's to Dr Chen dated 9 January 2015 which, after canvassing the stamp duty issue, stated:

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), s 142(3)(a)(i).

<sup>2</sup> *Pickering v McArthur* [2005] QCA 294 at [3].

So with your permission I would like to have all matter sorted and amend your return once.

...

Needless to say, our time in doing the amendment is free to you.

- [6] The tribunal took that email at face value and found that there would be no charge for an amended return<sup>3</sup>. Although Meiklejohn's disputes that interpretation, I cannot see, from the evidence, what other interpretation was possible.
- [7] The tribunal also found that the work covered by the disputed invoice was '*so heavily related and tied with the amendment that the bill itself fell under the heading "amendment is free to you"*'<sup>4</sup>.
- [8] There was conflicting evidence about whether the work contained in the disputed bill was all required because of Meiklejohn's mistake or whether Dr Chen provided some other information that required a reconsideration of the tax return. Ms Meiklejohn and an accountant, Mr Trute, gave evidence that Ms Meiklejohn did extra work, not related to the error, for which she was entitled to charge. Dr Chen and his associate Moshe Arad, gave evidence that it was all related to the error. The tribunal accepted the evidence of Dr Chen and Mr Arad.
- [9] The appeal tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.<sup>5</sup> An appellate tribunal may interfere if the conclusion is '*contrary to compelling inferences*' in the case.<sup>6</sup>
- [10] I have considered the transcript and the documents presented to the tribunal. The difficulty with Meiklejohn's argument is that much of the narrative of the disputed invoice relates to an amended tax return, and the invoice does not, as it perhaps should have, separate out the work required because of the error and the work which Meiklejohn's says was "new work". Therefore, the evidence can support the tribunal's finding of fact and I can find no compelling reason to come to a different view.
- [11] There is no reasonably arguable case that the tribunal was in error.
- [12] I note that Meiklejohn's filed submissions in reply, without the leave of the tribunal. Those submissions do not relate to the subject matter of Meiklejohn's appeal so there is no harm in disregarding them.

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<sup>3</sup> Transcript page 1-38, lines 29 – 37.

<sup>4</sup> Transcript page 1-38, line 46 to page 1-39, line 1.

<sup>5</sup> *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125-126.

<sup>6</sup> *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.

### Is Dr Chen entitled to costs?

- [13] Dr Chen has applied for an order that Meiklejohn's pay his costs of the application for leave to appeal and "some expenses" incurred in the proceeding below. Dr Chen has asked for an oral hearing as to the question of costs if the application for leave to appeal is dismissed.
- [14] The tribunal's obligation is to deal with matters in a way that is economical, informal and quick<sup>7</sup>. The QCAT Act has a strong contra-indication against costs<sup>8</sup>. I am therefore not persuaded that an oral hearing on the question of costs on an appeal from the tribunal's minor civil disputes jurisdiction is appropriate or necessary.
- [15] Dr Chen engaged a solicitor to prepare his submissions in response to this application and his application for costs includes the solicitor's charge for preparing the submissions. As Meiklejohn's points out, Dr Chen did not have leave for legal representation. Of course, because there was no oral hearing of the appeal, Dr Chen did not need the tribunal's leave but the fact that he engaged a lawyer does not, of itself, justify an order for costs.
- [16] Dr Chen's submissions in response to the application for leave to appeal raise issues that were not the subject of submissions before the tribunal below. He raised 26 "preliminary threshold issues" about the competency of Meiklejohn's initial application.
- [17] The subject matter of the appeal is a matter for the exercise of the appeal tribunal's discretion<sup>9</sup>, even though the appeal tribunal is not the final avenue of appeal<sup>10</sup>. In considering whether to exercise that discretion, the appeal tribunal starts from this proposition<sup>11</sup>:

It is elementary that a party is bound by the conduct of his case. Except in the most exceptional circumstances, it would be contrary to all principle to allow a party, after a case had been decided against him, to raise a new argument which, whether deliberately or by inadvertence, he failed to put during the hearing when he had an opportunity to do so.

- [18] The Court of Appeal considered what might be an exceptional case in another dispute about the application of s 42(4) of the *Queensland Building Services Authority Act 1991 (Qld) Act* in *Cook's Construction P/L v SFS P/L (formerly trading as Stork Food Systems Australasia P/L)*<sup>12</sup>. Apart from considering whether there was merit in the new issue, Fraser JA<sup>13</sup> concluded that the need for a new hearing, if the appeal point was

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<sup>7</sup> QCAT Act, s 3(b).

<sup>8</sup> *Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No 2)* [2010] QCAT 412; *Grasso v CMG Engineers Pty Ltd (No 2)* [2011] QCATA 326 at [11].

<sup>9</sup> *Coulton v Holcombe* [1986] HCA 33 at [8].

<sup>10</sup> *Ibid* at [9].

<sup>11</sup> *University of Wollongong v. Metwally (No. 2)* [1985] HCA 28 at p 71.

<sup>12</sup> [2009] QCA 075.

<sup>13</sup> *Ibid* at [155].

successful, was a reason to refuse to allow a party to rely on new points on appeal. That approach has been confirmed by the High Court<sup>14</sup>.

- [19] The issues Dr Chen now wants to raise – whether Meiklejohn’s was properly named as applicant, whether it was the correct applicant and whether its agents were authorised to commence the proceeding – are matters that Dr Chen should have raised in the proceeding below. I do not see why, even if a costs order is appropriate, Meiklejohn’s should be ordered to pay for the drafting of those submissions.
- [20] Dr Chen submits that s 102 of the QCAT Act and r 84 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) do not limit the amount that can be awarded as costs if the proceeding was commenced “unlawfully”. Dr Chen submits that the proceeding was commenced unlawfully because the application was signed by a collection agent, not Ms Meiklejohn herself. Dr Chen also submits that the claim does not plead any facts establishing the tribunal’s jurisdiction.
- [21] I agree that the claim, being a pro forma pleading from a debt collector, lacks the detail that tribunal normally sees and expects. However, in referring to a debt due, which is under the tribunal’s monetary threshold, the claim does establish jurisdiction.
- [22] The claim was signed electronically by Meiklejohn’s agent. There is nothing unlawful in that practice. The QCAT Act speaks against representation at hearings<sup>15</sup>, not against a party engaging assistance in the preparation of a case. I do not accept Dr Chen’s submission that the claim was unlawful.
- [23] Therefore, the usual rules about costs apply. Section 102(3) of the QCAT Act states that, in deciding whether to award costs, the tribunal may have regard to:
- a) whether a party to the proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding;
  - b) the nature and complexity of the proceeding;
  - c) the relative strengths of the claims made by each of the parties to the proceeding;
  - d) ...
  - e) the financial circumstances of the parties to the proceeding;
  - f) anything else the tribunal considers relevant.
- [24] It is important to remember, as Kingham DCJ observed<sup>16</sup>, that the provisions of s 102(3) are not grounds for awarding costs, merely factors the tribunal may take into consideration.

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<sup>14</sup> *Coulton v Holcombe* supra at [10]; *Suttor v Gundowda Pty. Ltd* (1950) 81 CLR 418, at p 438.

<sup>15</sup> QCAT Act, s 43(2)(a).

<sup>16</sup> *Ascot v Nursing & Midwifery Board of Australia* [2010] QCAT 364.

[25] I understand that Dr Chen considers Meiklejohn's appeal is lacking in substance<sup>17</sup>. Many appeals to the tribunal might be so characterised but the tribunal should be slow to order costs on this ground alone. I am not persuaded that the circumstances of this application for leave to appeal overturn the strong contra-indication against costs.

[26] Leave to appeal should be refused. There is no order as to costs.

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<sup>17</sup> QCAT Act s 47(1)(b).