

CITATION: *BFC Australia Pty Ltd v Playnation Pty Ltd*
[2016] QCATA 102

PARTIES: BFC Australia Pty Ltd
(Applicant/Appellant)
v
Playnation Pty Ltd
(Respondents)

APPLICATION NUMBER: APL355 -15

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 4 February 2016

DELIVERED AT: Brisbane

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

CATCHWORDS: APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – CONSUMER CLAIM – where commercial lease – where lease obligations guaranteed – where claim for refund of guarantee to lessee – where earlier Tribunal decision about the guarantee – where Tribunal found it was estopped from hearing claim - whether grounds for leave to appeal

APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – CONSUMER CLAIM – JURISDICTION - where claim for refund of guarantee to lessee – where filed as a consumer claim – where applicant not an individual – whether Tribunal had jurisdiction to hear claim

Thoday v Thoday [1964] P 181
Pickering v McArthur [2005] QCA 294

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] BFC Australia Pty Ltd rented commercial premises from Playnation Pty Ltd from March 2007 to March 2010. BFC's obligations were secured by a bank guarantee in favour of Playnation. At the end of the lease, Playnation called on the guarantee, and it was paid.
- [2] BFC sought a refund of some of the bank guarantee. On 17 August 2011, the Tribunal ordered that Playnation refund \$7,662.54 to BFC.
- [3] In 2015, BFC filed a claim for a further refund, of money paid to Playnation's lawyers. The Tribunal dismissed BFC's claim on the basis that BFC was estopped by the earlier proceedings.
- [4] BFC 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.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
- [5] BFC says that it had the wrong wording on its application; it did not want a refund of legal fees paid, it wanted a refund of money it paid to Playnation's lawyers in response to notices to remedy breach. It says that it did not have this evidence at the first hearing, but it has it now and, therefore, should be entitled to pursue that money.
- [6] BFC's application for leave to appeal is misconceived. The Tribunal understood that BFC was asking for a refund of the money it paid to Playnation in response to the notices to remedy breach. In fact, it was the Tribunal that correctly identified the nature of BFC's claim.³
- [7] The first Tribunal undertook a detailed analysis of the rent, rates and taxes and damages payable by BFC.⁴ The first Tribunal had a plethora of material before it.⁵ It considered that material in making its decision. BFC has added nothing of substance to that material, except for some unhelpful receipts from lawyers.

¹ QCAT Act s 142(3)(a)(i).

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

³ Transcript page 1-18.

⁴ Reasons for decision at [16] – [17].

⁵ Transcript page 1-10, lines 41 – 44.

- [8] It is a fundamental legal doctrine that the same parties cannot litigate the same points when the claim has been decided by a tribunal and the decision is not appealed.⁶
- [9] This Tribunal rightly identified that problem⁷ in its decision. BFC has had its day in the Tribunal. The dispute was finalised in 2011. BFC had no right to take the issue further unless it appealed the first decision.
- [10] I note that BFC filed the original application as a consumer dispute. A “consumer” under the QCAT Act must be an individual.⁸ BFC is not an individual; the Tribunal did not have jurisdiction to hear this proceeding as a consumer claim. It was not a minor debt claim. It was not a trader/trader claim. I therefore doubt the Tribunal had jurisdiction to hear the dispute at all.
- [11] BFC has not pointed to any error by the Tribunal. Leave to appeal is refused.

⁶ *Thoday v Thoday* [1964] P 181 at 197.

⁷ Transcript page 1-26, lines 8 – 9.

⁸ Schedule 2.