

CITATION: *Haring v Dauti* [2016] QCATA 142

PARTIES: Greg Haring
(Applicant/Appellant)
v
Manjola Dauti
(Respondent)

APPLICATION NUMBER: APL216 - 16

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 26 July 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application for a stay of the decision dated 27 June 2016 is refused.**

CATCHWORDS: APPEAL – LEAVE TO APPEAL – PROCEDURE AND EVIDENCE – STAY OF OPERATION OF DECISION - Minor Civil Dispute – where decision to ward compensation – where application for leave to appeal – where application for a stay of decision - whether grounds for stay exist

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 140, s 145(2)

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] Manjola Dauti hired a four wheel drive from Adventure 4WD Centre Rainbow Beach. She hired it to drive on sand at Fraser Island. When she returned the car, Adventure charged her \$1,000 because, it said, Ms Dauti had driven the car through salt water. Ms Dauti denied that she did so. She filed a claim in the Tribunal for a refund of the \$1,000. The Tribunal ordered that Adventure refund the money.
- [2] Greg Haring owns Adventure. He wants to appeal that decision. He also applied for a stay of the Tribunal's decision.
- [3] The Appeal Tribunal may stay the decision of the Tribunal until the appeal is finally decided.¹ The discretion to grant a stay is unfettered. The fundamental principle governing applications for a stay is that the successful party is entitled to the fruits of its judgment, and the question is whether or not there is some particular feature of the case which warrants departure from that position.
- [4] To succeed in an application for a stay, a party must show:
- a) Reasonable prospects of success on appeal;
 - b) That the balance of convenience favours a stay;
 - c) That the refusal to grant a stay will not make the application for leave to appeal futile.

Prospects of success

- [5] Mr Haring complains about the fact that, on a reopened hearing, the Tribunal did not take account of the original decision. That was the correct approach: the Tribunal was to hear the matter again.² The Tribunal was not in error.
- [6] The Tribunal's decision turned on a finding of fact: whether Ms Dauti drove through salt water. Unsurprisingly, the parties gave conflicting evidence. Ms Dauti says she did not drive through salt water; Mr Haring said that she did.
- [7] Findings of fact by a Tribunal will not usually be disturbed on appeal if the facts inferred by the Tribunal, upon which the finding is based, are capable of supporting its conclusions, and there is evidence capable of supporting any inferences underlining it.³ An Appellate Tribunal may interfere, however, if the conclusion at first instance is 'contrary to compelling

¹ QCAT Act s 145(2).

² QCAT Act s 140(1), (2).

³ *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125-126.

inferences' in the case.⁴ My preliminary view is that the Tribunal's decision was not contrary to the compelling inferences of the case.

[8] Mr Haring's prospects of success on appeal are not strong.

Balance of convenience

[9] A stay will not usually be granted where the decision the subject of a stay is for the payment of money unless the applicant can show that there will be hardship in the payment of that money which outweighs the usual position that the successful party is entitled to be paid. Mr Haring has not made any submissions about his financial position, whether a payment of \$1,000 will impose an excessive burden or whether Ms Dauti has, or does not have, the capacity to repay the money in the event that his appeal is successful. Mr Haring has not demonstrated that the balance of convenience favours a stay.

The appeal will be futile

[10] If Mr Haring succeeds on appeal, he will be entitled to recover the payment from Ms Dauti. There is a point to the appeal proceeding even if a stay is not granted.

Conclusion

[11] The application for a stay of the decision dated 27 June 2016 is refused.

⁴ *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.