

**CITATION:** *Mace & Levy v Twomey Schriber Property Group* [2016] QCATA 17

**PARTIES:** **Susan Mace**  
**(First Applicant/Appellant)**  
**Todd Levy**  
**(Second Applicant/Appellant)**  
v  
**Twomey Schriber Property Group**  
**(Respondent)**

**APPLICATION NUMBER:** APL483-15

**MATTER TYPE:** Appeals

**HEARING DATE:** 12 January 2016

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Carmody**

**DELIVERED ON:** 22 January 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **THE APPEAL TRIBUNAL ORDERS THAT:**

1. the procedural requirements for withdrawal of an application for leave to appeal are waived under s 61(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld); and
2. the application for leave to appeal was withdrawn on 12 January 2016 under s 46(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL – where the applicant sought leave to appeal against a decision of a Magistrate ordering the applicants to pay the respondent monies as a result of certain damage caused to plumbing fixtures – whether leave to appeal should be granted.

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), ss 3, 28, 46, 57A, 61

**APPEARANCES and REPRESENTATION (if any):**

**APPLICANT/APPELLANT**      S Mace for the first and second applicants

**RESPONDENT**                      Z Schriber for the respondent

**REASONS FOR DECISION**

- [1] This is an application to stay the operation of a decision and orders of Magistrate Pinder on 2 November 2015 requiring the applicants to pay the respondent \$1,729.91 for rent in arrears and damage caused to plumbing in the property during the subsistence of the tenancy agreement.
- [2] The applicants also filed a further interlocutory application on 23 December 2015 for orders requiring the respondent to produce the damaged plumbing.
- [3] During the proceedings the applicants informed the Appeal Tribunal that they wished to withdraw their application for leave to appeal.
- [4] Section 46(1) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act provides that an applicant may, in the manner prescribed under the *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld) ('QCAT Rules'), withdraw an application before a matter is heard and decided by the Appeal Tribunal.
- [5] Rule 57A(2) of the QCAT Rules provides that an applicant may withdraw an application by filing a notice in the approved form, and serving a copy of the notice on each other party.
- [6] The applicants have failed to file the correct form to withdraw the application for leave to appeal. The applicants have not served the application for leave to appeal on the respondent.
- [7] Section 61(1)(c) of the QCAT Act provides that the Appeal Tribunal may '*waive compliance with another procedural requirement under this Act... or the rules*'. Section 61(4) provides that the jurisdiction to waive compliance with a procedural requirement may be exercised on the Appeal Tribunal's own motion.
- [8] The Appeal Tribunal is enjoined to dispense with matters in a way that is "accessible, fair, just, economical, informal and quick".<sup>1</sup> The Appeal Tribunal must act "with as little formality and technicality and with as much speed as the requirements of this Act, an enabling Act or the rules and a proper consideration of the matters before the tribunal permit".<sup>2</sup>

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<sup>1</sup> *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 3(b).

<sup>2</sup> *Ibid*, s 28(3)(b).

- [9] Having regard to the objects and functions of the Appeal Tribunal, it would be absurd to refuse to permit the applicants to withdraw their application for leave to appeal without filing and serving the prescribed form. The Appeal Tribunal should employ procedures designed to encourage early resolution of disputes to promote efficiency and the expedient use of resources.
- [10] The Appeal Tribunal should waive the procedural requirements under the QCAT Act and Rules for the applicants to withdraw their application for leave to appeal. The application for leave to appeal is taken as withdrawn.

## **ORDERS**

- [11] It is the decision of the Appeal Tribunal that:
1. the procedural requirements for withdrawal of an application for leave to appeal are waived; and
  2. the application for leave to appeal was withdrawn on 12 January 2016 under s 46(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).