

**CITATION:** *D'Alessandro v North End Tiling Pty Ltd* [2016] QCAT 64

**PARTIES:** Shane D'Alessandro t/as Mediterranean Pools  
(Applicant/Appellant)  
v  
North End Tiling Pty Ltd  
(Respondent)

**APPLICATION NUMBER:** APL500 -15

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

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

**DELIVERED ON:** 2 March 2016

**DELIVERED AT:** Brisbane

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

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – MINOR DEBT - where contracts for tiling – where contracts oral or by text message – where identity of contracting party raised as a response – where tribunal found respondent personally liable - whether grounds for leave to appeal

APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – PROCEDURE – where respondent had written submissions – where respondent asked tribunal if he should hand up written submissions – where tribunal asked respondent if he had covered all of the contents of the submissions – where respondent told the tribunal he had covered all of the contents of his submissions - where tribunal did not take written submissions – whether tribunal erred – whether grounds for leave to appeal

*Fish v Kempton* (1849) 7 C.B. 687  
*Siu v Eastern Insurance Co Ltd* [1994] 2 AC 199

*Dearman v Dearman* (1908) 7 CLR 549  
*R v Brown* [1912] HCA 6  
*Fox v Percy* (2003) 214 CLR 118  
*Pickering v McArthur* [2005] QCA 294  
*Clarke v Japan Machines (Australia) Pty Ltd*  
 [1984] 1 Qd R 404  
*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] North End Tiling Pty Ltd contracted to do tiling work for “Shane” from Mediterranean Pools. “Shane” was Shane D’Alessandro. Mr D’Alessandro engaged North End either verbally or by text message. North End did the work and rendered invoices to “Shane Mediterranean Poolz”. Many invoices were not paid so North End filed a claim in the tribunal. The tribunal ordered Mr D’Alessandro pay North End \$22,208.15.
- [2] Mr D’Alessandro 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>
- [3] Mr D’Alessandro says that he was always contracting on behalf of a company, Mediterranean Pools Pty Ltd up to 5 February 2014 and Mediterranean Pools & Spas Qld Pty Ltd from 4 February to date. He says the tribunal erred in failing to allow him to hand up his submissions at the hearing. He says the tribunal erred in finding that North End contracted with him directly and not the company. He says the tribunal erred in finding that he had a positive obligation to inform North End it was dealing with a company. He says the tribunal erred in the quantum of the order.
- [4] **Fresh evidence**
- [5] Mr D’Alessandro filed fresh evidence with his application for leave to appeal.
- [6] The appeal tribunal will only accept fresh evidence if it was not reasonably available at the time the proceeding was heard and determined. Ordinarily, an applicant for leave to adduce such evidence must satisfy three tests. Could the parties have obtained the evidence with reasonable diligence for

<sup>1</sup> QCAT Act, s 142(3)(a)(i).

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

use at the trial? If allowed, would the evidence probably have an important impact on the result of the case? Is the evidence credible?<sup>3</sup>

- [7] Mr D'Alessandro filed a further affidavit and copies of ASIC searches for the two companies. The ASIC searches simply confirm evidence that was already before the tribunal. They will not have an important impact on the result of the case.
- [8] Mr D'Alessandro filed copies of bank receipts that purport to show the payments to North End came from the company. They do not show that because the bank account details are not shown. Again, they will not have an important impact on the result of the case.
- [9] Mr D'Alessandro also swore an affidavit. The affidavit simply reinforces the evidence he gave to the tribunal. It will not have an important impact on the result of the case.
- [10] The evidence should not be admitted and the application for leave to appeal must proceed on the basis of the evidence before the tribunal.

#### **Did the tribunal refuse Mr D'Alessandro's submissions?**

- [11] The transcript of the exchange between Mr D'Alessandro and the tribunal is as follows<sup>4</sup>:

MR D'ALESSANDRO: ... I've just – I've got – oh, do I give you the submissions at all or just keep that?

TRIBUNAL: Do you need – well, unless there's – if you've told me ...

MR D'ALESSANDRO: There was pretty much – there – yeah. There was just that. There was just, yeah, pretty much what I've mentioned, so ...

TRIBUNAL: Okay. So you've said everything that's included in those submissions?

MR D'ALESSANDRO: I – I – I – I think so. Yes.

TRIBUNAL: Okay. All right. Thank you...

- [12] I do not accept the submission that the tribunal refused to accept Mr D'Alessandro's submissions. He told the tribunal he had them, he told the tribunal that he covered the contents of the document in his oral submissions. The tribunal was entitled to act on that advice and proceed without receiving the written document.
- [13] Mr D'Alessandro now says that the submissions, in fact, contained evidence. He says that he annexed the ASIC searches to his submissions. Mr D'Alessandro did not tell the tribunal that the submissions contained

<sup>3</sup> *Clarke v Japan Machines (Australia) Pty Ltd* [1984] 1 Qd R 404 at 408.

<sup>4</sup> Transcript page 1-29, lines 1 - 13

evidence. It is difficult to be critical of the tribunal for rejecting something of which it had no knowledge.

[14] The ASIC searches show the existence of companies. They do not address the central issue of whether North End was ever aware it was dealing with a company, and not Mr D'Alessandro personally.

[15] The tribunal was not in error.

**Did the tribunal err in finding that North End contracted with Mr D'Alessandro directly and not the company?**

[16] Mr D'Alessandro now submits that he told North End it was dealing with a company and not him personally. He says that North End's knowledge of the company is supported by the fact that it sent invoices to "Shane" at "Mediterranean Pools" because this shows the existence of some form of corporate entity. He says that, at the very least, that should have put North End on notice. He also says there is no positive obligation on him, at law, to go further in advising North End that it was dealing with a company.

[17] 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>

[18] The tribunal had sworn evidence from Troy Kinson, director of North End that he thought he was dealing with Shane D'Alessandro. Mr D'Alessandro contacted him to arrange the work<sup>7</sup>. Payments came from "Mediterranean Pools"<sup>8</sup>. Mr D'Alessandro admitted that North End did not know that he was acting as agent for his company<sup>9</sup>.

[19] The best evidence for Mr D'Alessandro is his statement that he believed he told Mr Kinson he was trading as a company<sup>10</sup>. But even that evidence fails when Mr D'Alessandro admitted that he changed corporate structures without notice to North End.

[20] North End had no duty to inquire as to whether Mr D'Alessandro was acting for an undisclosed principal<sup>11</sup>. Because North End was not aware that Mr D'Alessandro was acting as agent, it could elect to sue Mr D'Alessandro personally<sup>12</sup>.

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<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.

<sup>7</sup> Transcript page 1-17, lines 45 – 47; page 1-20, lines 18 - 20

<sup>8</sup> Transcript page 1-16, lines 44 - 45

<sup>9</sup> Transcript page 1-20, lines 36 - 38

<sup>10</sup> Transcript page 1-21

<sup>11</sup> *Fish v Kempton* (1849) 7 C.B. 687 cited with approval in *R v Brown* [1912] HCA 6

<sup>12</sup> *Siu v Eastern Insurance Co Ltd* [1994] 2 AC 199, 207

- [1] There is nothing in the transcript to persuade me that the tribunal should have taken a different view of the facts. The tribunal was correct in its application of the principles of agency.

**Was the tribunal in error about the quantum of the order?**

- [2] The tribunal had difficulty with the quantum of North End's claim. It produced a pile of invoices with no analysis of what was paid and what was not paid.<sup>13</sup> It is not for the tribunal to work out a party's claim but that is what happened in this case. Doing the best it could, the tribunal arrived at a figure.
- [3] Mr D'Alessandro did not question the quantum of the claim. He admitted the work was done but denied that he was responsible<sup>14</sup>.
- [4] Mr D'Alessandro now says there was an error of fact in the tribunal's assessment because two invoices were, in fact, paid. The exercise undertaken by the tribunal was to assess all of the invoices. And all of the payments, and deduct one figure from the other. The paid invoices that Mr D'Alessandro has now referred to the tribunal should have been dealt with in that exercise. Given there is no other attempt to analyse the amounts owing, I am not persuaded that I should undertake the onerous task of sorting out the detail of the transactions and I am not persuaded that the tribunal was in error.
- [5] There is no reasonably arguable case that the tribunal was in error. Leave to appeal should be refused.

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<sup>13</sup> Transcript page 1-7, lines 38 - 40

<sup>14</sup> Transcript page 1-27, lines 5 - 6