

CITATION: *Body Corporate for Sierra Grand CTS 38268 v Babbage* [2016] QCATA 78

PARTIES: Body Corporate for Sierra Grand CTS 38268
(Applicant/Appellant)
v
Mike Babbage t/as The Babbage Family Trust
(Respondent)

APPLICATION NUMBER: APL543 -15

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 20 May 2016

DELIVERED AT: Brisbane

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

CATCHWORDS: APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – MINOR DEBT – where invoice for work done – where tribunal found work done and ordered payment – where fresh material filed with application for leave to appeal – where no reason for failure to file evidence at hearing - whether grounds for leave to appeal

Dearman v Dearman (1908) 7 CLR 549
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] On 20 February 2013, Mike Babbage t/as The Babbage Family Trust sent an invoice to Body Corporate for Sierra Grand CTS 38268 for \$4,087.60 for work done on 3 December 2012. The body corporate did not pay the invoice so, on 25 November 2014, Mr Babbage filed a minor debt claim for that sum. After a few false starts, the tribunal heard the dispute on 26 November 2015 and found in favour of Mr Babbage.
- [2] The body corporate 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
- [3] The body corporate says that, at the hearing, it was advised that it should have obtained a statutory declaration from Ms Hare, the building manager at the time. It now has that declaration which, it says, proves that Mr Babbage did not do the work for which he billed.
- [4] The appeals 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 use at the trial? If allowed, would the evidence probably have an important impact on the result of the case? Is the evidence credible?³
- [5] An application for leave to appeal is not, and should not be, an attempt to shore up the deficiencies of a party's case at the initial hearing. The tribunal did ask if the body corporate had a statement from Ms Hare⁴. Mr Baran, for the body corporate, told the tribunal⁵ "*we can probably get one off her*". The tribunal, correctly, observed that the hearing was today.⁶ There was no invitation from the tribunal to get a statement from Ms Hare at some later time.
- [6] As I have previously observed, Mr Babbage issued the invoice in February 2013. He issued the claim in November 2014. On 13 August 2015, the tribunal set aside a default decision. The dispute was listed for hearing on 8 September 2015, 25 September 2015, on 28 October 2015, and, finally, on 26 November 2015. The body corporate had ample time to obtain a statement from Ms Hare. The fact that she was no longer employed is not a good enough reason for the body corporate's failure to do so. The body corporate has not explained why Ms Hare's statement was not available earlier. That evidence should not be admitted and the application for leave to appeal must proceed on the basis of the evidence before the tribunal.

1 QCAT Act, s 142(3)(a)(i).

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

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

4 Transcript page 1-23, lines 22 – 24.

5 Transcript page 1-23, line 30.

6 Transcript page 1-23, line 32.

- [7] The appeal tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.⁷ An appellate tribunal may interfere if the conclusion is 'contrary to compelling inferences' in the case.⁸
- [8] The tribunal heard from Mr Babbage about the work he performed. It was not the whole of the work he quoted but the tribunal was satisfied that he performed the work the subject of the invoice. The evidence can support that finding and I can find no compelling reason to take a different view.
- [9] There is no reasonably arguable case that the tribunal was in error. Leave to appeal should be refused.

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

⁸ *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.