

**CITATION:** *Batterham's Electrical Switchboard Services and Trading Pty Ltd v Aligned International Services Corporation* [2017] QCATA 68

**PARTIES:** Batterham's Electrical Switchboard Services and Trading Pty Ltd  
(Applicant/Appellant)  
v  
Aligned International Services Corporation  
(Respondent)

**APPLICATION NUMBER:** APL079- 17

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

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

**DELIVERED ON:** 12 June 2017

**DELIVERED AT:** Brisbane

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

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL – INTERFERENCE WITH FINDINGS OF FACT – PROOF AND EVIDENCE – OTHER MATTERS – where both parties led insufficient evidence to prove a fact – where Tribunal made finding of fact based on evidence available before it – whether evidence capable of supporting the finding of fact – whether grounds for leave to appeal

*Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 142(3)(a)(i)*

*Chambers v Jobling* (1986) 7 NSWLR 1  
*Dearman v Dearman* (1908) 7 CLR 549  
*Fox v Percy* (2003) 214 CLR 118  
*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] Aligned International Services Corporation is a company whose office is in Thailand. In 2013, it provided technical services to Energy Power Systems Australia Pty Ltd (EPSA) for two projects; one in Queensland and one in the Northern Territory. For reasons best known to the parties, and not explained in the proceedings, EPSA engaged Aligned through an agent, Batterham's Electrical Switchboard Services and Trading Pty Ltd. EPSA paid Batterham's and Batterham's paid Aligned. Batterham's added a small margin to the hourly rates payable to Aligned, which it retained.
- [2] Batterham's stopped paying Aligned. It was deregistered. In an adjudication under the *Building and Construction Industry Payment Act 2004* (Qld) in 2013, David Batterham, Batterham's alter ego, was ordered to pay Aligned \$79,337 from a claim of \$83,114.17.
- [3] The adjudicator did not award Aligned \$2,168 which related to Aligned's work in the Northern Territory, as it did not fall within the Queensland-based jurisdiction of the *Building and Construction Industry Payment Act*.
- [4] Aligned filed a minor debt claim in the tribunal for that \$2,168. Batterham's filed a further response five days before the hearing and seven months after its first response, asking the tribunal to order Align to pay for professional indemnity insurance in the amount of \$8,052.
- [5] The tribunal ordered Batterham's pay Align the amount claimed plus costs. It dismissed Batterham's claim for payment of the indemnity insurance.
- [6] Batterham's 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>
- [7] Batterham's says the tribunal failed to fully consider the evidence presented at the first hearing by EPSA. It says that, if the tribunal had considered that evidence, it would not have accepted the hourly rates advanced by Align.
- [8] 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

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

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

any inferences underlining it.<sup>3</sup> An appellate tribunal may interfere, however, if the conclusion at first instance is 'contrary to compelling inferences' in the case.<sup>4</sup>

- [9] The dispute before the tribunal was about the hourly rates that applied for particular activities. The *Building and Construction Industry Payment Act* adjudicator, based on an email from Aligned to Mr Batterham, found that the agreed rates were \$137/hour for office rates, plus an administration fee of \$15/hour to Batterham's, and \$110/hour for site work (plus \$15/hour to Batterham's).
- [10] Neither party accepted that this was the correct rate. Aligned said that it had agreed a higher rate directly with ESPA. Batterham's said that the rate was lower, or wrongly applied.
- [11] The tribunal asked both parties for evidence of their position. Neither party could point to any. When Aligned argued an oral contract with ESPA, the tribunal, rightly, told Aligned that someone from ESPA should have been available to give evidence about that agreement and it would not accept uncorroborated evidence of the rate change.<sup>5</sup>
- [12] Mr Batterham argued that there was, in fact, no contract.<sup>6</sup> The tribunal did not accept that was the position and found, on balance, that the adjudicator's findings should be accepted.
- [13] It is clear that the tribunal did look at the ESPA material.<sup>7</sup> The tribunal accepted the only rate for which there was some evidence and some agreement. An examination of the invoices to ESPA did not clarify either side's position, nor did it detract from the findings that the tribunal adopted from the adjudicator. The evidence can support the tribunal's findings and I can find no compelling reason to come to a different view.
- [14] There is no reasonably arguable case that the tribunal was in error. Leave to appeal should be refused.

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

<sup>4</sup> *Chambers v Jobling* (1986) 7 NSWLR 1, 10.

<sup>5</sup> Transcript page 1-12.

<sup>6</sup> Transcript page 1-15, lines 27 – 37.

<sup>7</sup> See transcript page 1-36 to 1-37.