

CITATION: *Dash v Hopkins* [2017] QCATA 87

PARTIES: **John Dash**
(Applicant/Appellant)
v
Rohan Hopkins
(Respondent)

APPLICATION NUMBER: APL162-17

MATTER TYPE: Applications and Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Carmody**

DELIVERED ON: 7 June 2017

DELIVERED AT: Brisbane

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

- 1. The application to stay a decision filed 24 May 2017 in Minor Civil Dispute claim number 139/17 is refused.**

CATCHWORDS: APPEAL – LEAVE TO APPEAL – STAY – where the applicant filed an application to stay the operation of the decision – where the applicant failed to file submissions or evidence in support of the application to stay the decision – where the applicant failed to establish a “good arguable case” of vitiating error – whether the application to stay should be granted.

Queensland Civil and Administrative Tribunal Act 2009 ss 32, 122

KG v The Public Trustee of Queensland [2011] QCATA 1

Wheeler & Smith v Body Corporate for Calypso Towers & Anor [2015] QCATA 162

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] The tribunal terminated a tenancy agreement for failure to leave on 3 May 2017. The applicant filed a form 39, an application for leave to appeal or appeal, on 19 May 2017. On 24 May 2017 an application to stay a decision¹ was filed by the applicant. The form 44 stated that the applicant is applying to have the decision stayed because of personal circumstances where the enforcement of the decision “will cause undue hardship on them by having to leave the property without being able to relocate to an alternative property. The decision does not give sufficient consideration to the welfare of the children”.
- [2] On 25 May 2017 I granted an order “suspending the operation of the termination and warrant” and directed the applicant to file submissions and material in support of the application to stay a decision or advise no further material will be filed by 30 May 2017. The applicant did not file further submissions nor did he advise the tribunal of his intention to rely on the filed material.
- [3] On 7 June 2017 the tribunal refused the applicant’s application to stay the decision filed 24 May 2017 in Minor Civil Dispute claim number 139/17.
- [4] The applicant, within the prescribed time, filed a request that the tribunal give written reasons for the decision.²
- [5] The tribunal was not provided with sufficient evidence to establish the necessary facts relied on by the applicant in support of the stay application.³
- [6] The prospects of success, balance of convenience and likelihood of obtaining alternative relief are relevant factors in considering whether to grant a stay of the decision pending appeal.
- [7] The applicant has not set out any errors of law or fact, instead, states “... the Magistrate did not take into account the current rental market and my circumstances when setting the date to leave the property”. Mere assertions about the merits or what a decision maker did or did not consider (and how much) will not be enough to establish a “good arguable case” of vitiating error.⁴

1 QCAT Form 44.

2 QCAT Act s 122.

3 *Wheeler & Smith v Body Corporate for Calypso Towers & Anor* [2015] QCATA 162.

4 *KG v Public Trustee of Queensland* [2011] QCATA 1, [2]-[3].

- [8] Thus, the application to stay the decision was refused for non-compliance with the directions and partly on the assumption that, as often happens, it had been overtaken by events and was no longer being pursued.