

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Hartigan v Quiroz-Jimenez* [2018] QCATA 95

PARTIES: **TONY HARTIGAN T/AS SUN CITY POOLS**  
(appellant)  
v  
**TATIANA QUIROZ-JIMENEZ**  
(respondent)

APPLICATION NO/S: APL407-17

ORIGINATING APPLICATION NO/S: MCDO173/17

MATTER TYPE: Appeals

DELIVERED ON: 6 July 2018

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS: **Leave to appeal refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – IN GENERAL – INJUSTICE – GENERALLY – where applicant applied for leave to appeal – where claim was both building dispute and minor civil dispute – where Tribunal dealt with claim as minor civil dispute – where applicant filed evidence of compliance with building legislation in any event – where no prejudice to appellant – where leave not needed to correct substantial injustice

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – PARTICULAR CASES – CONTROL OVER PROCEEDINGS – OTHER CASES – where allegation of denial of natural justice – where Tribunal has mandate to deal with matters quickly – where Tribunal admitted all appellant’s items into evidence and specifically referred to appellant’s submissions about jurisdiction, quantum and set-off – where appellant was given opportunity to present case – where appellant was afforded natural justice within context of Tribunal’s minor civil disputes jurisdiction

*Queensland Building and Construction Commission Act* 1991 (Qld), s 77, Schedule 1B, Schedule 2

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 3, s 4, s 12, s 28, s 143, Schedule 3

*Bradlyn Nominees Pty Ltd v Saikovski* [2012] QCATA 39

*Cachia v Grech* [2009] NSWCA 232

*Creek v Raine & Horne Mossman* [2011] QCATA 226

*Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388

*Kioa v West* (1985) 159 CLR 550

*McIver Bulk Liquid Haulage Pty Ltd v Fruehauf*

*Australia Pty Ltd* [1989] 2 Qd R 577

*QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41

*Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe* [2013] QCATA 212

*Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247

#### REPRESENTATION:

Applicant: Self-represented

Respondent: Self-represented

#### APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

### REASONS FOR DECISION

#### What is this appeal about?

- [1] A Judicial Registrar ordered Tony Hartigan t/as Sun City Pools to pay Tatiana Quiroz-Jimenez \$8,163.40 for defective workmanship relating to a pool he installed.
- [2] Mr Hartigan wants to appeal that decision.
- [3] Because this is an appeal from a minor civil dispute, leave is required.<sup>1</sup>
- [4] In determining whether to grant leave, the Tribunal will consider established principles including:
  - (a) whether there is a reasonably arguable case of error in the primary decision;<sup>2</sup>
  - (b) whether there is a reasonable prospect that the appellant will obtain substantive relief;<sup>3</sup>

<sup>1</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), s 143(3).

<sup>2</sup> *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

<sup>3</sup> *Cachia v Grech* [2009] NSWCA 232, 2.

- (c) whether leave is needed to correct a substantial injustice caused by some error;<sup>4</sup> and
- (d) whether there is a question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage.<sup>5</sup>

[5] I will address the grounds of appeal below.

**Did the Tribunal have jurisdiction to decide Ms Quiroz-Jimenez’s claim as a minor civil dispute?**

[6] Mr Hartigan submitted that the Tribunal did not have jurisdiction to hear the claim as a minor civil dispute because it was a building dispute.

[7] The Tribunal’s decision that it had jurisdiction to determine the dispute as a minor civil dispute is correct. Section 12 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) confers the Tribunal’s jurisdiction over minor civil disputes. A ‘minor civil dispute’ relevantly includes a claim arising out of contract between a consumer and a trader.<sup>6</sup> Ms Quiroz-Jimenez is a ‘consumer’ because she was supplied with goods and services – the installation of a pool.<sup>7</sup> Mr Hartigan is a ‘trader’ because he carries on a business of supplying goods or providing services – pool installation.<sup>8</sup>

[8] While it is also correct that a claim relating to pool installation would be a ‘building dispute’ as either a ‘domestic building dispute’ or a ‘minor commercial building dispute’,<sup>9</sup> nothing turns on it. Nothing prevents a dispute being characterised as both a ‘building dispute’ and a ‘minor civil dispute’ if meets the criteria of both.

[9] The only relevance of a matter being a ‘building dispute’ is to require the parties to file evidence that they had participated in early dispute resolution as required by section 77(2) of the *Queensland Building and Construction Commission Act 1991* (Qld) (‘QBCC Act’). Ms Quiroz-Jimenez filed this evidence with her originating application.<sup>10</sup>

[10] Mr Hartigan submitted that the matter should have been dealt with as a building dispute to allow for a directions hearing, compulsory conference, evidence presented by both parties and he could file a counter-claim.

[11] However, Mr Hartigan was unable to identify any prejudice. Mr Hartigan had three months between the filing of Ms Quiroz-Jimenez’s application and the hearing to

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<sup>4</sup> *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

<sup>5</sup> *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388, 389; *McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577, 577, 580.

<sup>6</sup> QCAT Act, s 12(4)(b), Schedule 3.

<sup>7</sup> *Ibid* Schedule 3 definition of ‘consumer’.

<sup>8</sup> *Ibid* Schedule 3 definition of ‘trader’.

<sup>9</sup> *Queensland Building and Construction Commission Act 1991* (Qld), s 77(1), Schedule 2 definitions of ‘building dispute’, ‘domestic building dispute’, ‘minor commercial building dispute’, ‘commercial building dispute’, ‘reviewable domestic work’, ‘reviewable commercial work’; Schedule 1B, s 4 definitions of ‘domestic building work’ and ‘associated work’.

<sup>10</sup> Letter Queensland Building and Construction Commission to Tatiana Quiroz-Jimenez dated 5 June 2017.

file his own application. He participated in mediation before the hearing.<sup>11</sup> He attended a full oral hearing where the learned Judicial Registrar admitted all his documents into evidence.<sup>12</sup>

- [12] Holding a directions hearing for a claim limited to \$25,000.00 and for which only \$8,000.00 was ultimately awarded was unnecessary and would be contrary to the Tribunal's mandate to deal with matters in a way that is accessible, fair, just, economical, informal and quick.<sup>13</sup>
- [13] Leave is not needed to correct a substantial injustice.
- [14] This ground of appeal is dismissed.

### **Did the Tribunal afford Mr Hartigan natural justice?**

- [15] Mr Hartigan submitted that that the Tribunal did not afford him natural justice because it did not take proper account of his submissions at the hearing, referred to in attachment 1 to in his Application for leave to appeal or appeal.
- [16] The Tribunal must observe the rules of natural justice.<sup>14</sup> However, natural justice is a flexible notion that must be commensurate with the nature and demands of the jurisdiction – it is a matter of construction of a particular statutory power.<sup>15</sup> The requirements of procedural fairness must be adjusted to the statutory framework governing the Tribunal.<sup>16</sup>
- [17] The Tribunal's statutory mandate to conduct proceedings in an informal way that minimises costs to parties and is as quick as is consistent with achieving justice,<sup>17</sup> is at its most acute in the busy and demanding minor civil disputes jurisdiction, where thousands of applications are processed and determined each year.<sup>18</sup> Within this context, the Tribunal is not bound by the rules of evidence,<sup>19</sup> and may inform itself in any way it considers appropriate.<sup>20</sup> The minor civil disputes jurisdiction requires the Tribunal to deal with matters fairly, quickly and economically.<sup>21</sup>
- [18] I have read the transcript. The learned Judicial Registrar admitted all of Mr Hartigan's items into evidence and specifically referred to Mr Hartigan's submissions about jurisdiction, set-off and quantum. Indeed, the learned Judicial Registrar *preferred* Mr Hartigan's submissions on quantum.<sup>22</sup>
- [19] While the learned Judicial Registrar did not explicitly refer to Mr Hartigan's expert's general opinion that the pool was 'of a high standard of finish' when giving

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<sup>11</sup> Certificate of Mediation Outcome dated 19 September 2017.

<sup>12</sup> Transcript pages 1-44 to 1-46, 1-64 to 1-65.

<sup>13</sup> QCAT Act, s 3(b).

<sup>14</sup> Ibid s 28(3)(a).

<sup>15</sup> *Kioa v West* (1985) 159 CLR 550, 584-585.

<sup>16</sup> *Creek v Raine & Horne Mossman* [2011] QCATA 226, [15] (Wilson J).

<sup>17</sup> QCAT Act, s 4(c).

<sup>18</sup> *Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe* [2013] QCATA 212, [46] (Wilson J).

<sup>19</sup> QCAT Act, s 28(3)(b).

<sup>20</sup> Ibid s 28(3)(c).

<sup>21</sup> Ibid ss 3, 4.

<sup>22</sup> Transcript pages 1-66 to 1-67.

her oral reasons, it is implicit that she placed more weight on Mr Hartigan's own admissions of specific defective work. It is not an error to not explain away each and every item of evidence not considered relevant or of sufficient weight.<sup>23</sup>

- [20] The learned Judicial Registrar allowed both parties to present their cases, asked relevant questions and gave them an opportunity to respond, referring to supporting material where appropriate. By doing so, she focused the hearing on the issues to be determined and used time and resources efficiently, consistent with the Tribunal's mandate. Extending the requirements of natural justice beyond this is inconsistent with the QCAT Act and would make the minor civil disputes jurisdiction cumbersome.
- [21] The learned Judicial Registrar afforded Mr Hartigan natural justice within the context of the Tribunal's minor civil disputes jurisdiction.
- [22] This ground of appeal is dismissed.

**Did the Tribunal err in giving Ms Quiroz-Jimenez the option of accepting an order that Mr Hartigan pay her \$8,000.00 or as a set-off against money owed to Hartigan?**

- [23] This is not a ground of appeal.

**Should the Appeal Tribunal grant leave to appeal?**

- [24] Having read the transcript and considered the evidence, I find nothing to indicate that the learned Judicial Registrar acted on a wrong principle, or made mistakes of fact affecting her decision, or was influenced by irrelevant matters. The evidence was capable of supporting her conclusions. Nothing in the material or the transcript persuades the Appeal Tribunal that the learned Judicial Registrar's findings were not open to her.
- [25] There is no question of general importance for the Appeal Tribunal to determine. There is no reasonably arguable case that the Tribunal was in error. There is no reasonable prospect of substantive relief on appeal. There is no evidence that a substantial injustice will result if leave is not granted. Leave to appeal should be refused.

**What is the appropriate Order?**

- [26] The appropriate Order is:
- (a) Leave to appeal refused.

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<sup>23</sup> *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247, 271.