QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Arowana Pty Ltd (t/a Choice IT Australia v Scott* [2019] QCATA 100
PARTIES:	AROWANA PTY LTD (t/a CHOICE I.T. AUSTRALIA) (applicant) **v** JASON SCOTT (respondent)
APPLICATION NO:	APL308-18
ORIGINATING APPLICATION NO:	MCDO 0188/2018 Townsville
MATTER TYPE:	Appeals
DELIVERED ON:	28 June 2019
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Dr JR Forbes,Member
ORDERS:	The application for leave to appeal is dismissed.

CATCHWORDS:

APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – CONSUMER CLAIM – purchase and installation of communication system - where system not of acceptable quality – where consumer charged for replacement - where consumer seeks to recover moneys paid for replacement - where service of notice of hearing on trader regular – where trader failed to appear at hearing - where Tribunal decided matter *ex parte* – whether Tribunal entitled to do so

Acts Interpretation Act 1954 (Qld) ss 39, 39A
Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth) ss 54,55,261
Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 32,92,93,138,142
Queensland Civil and Administrative Tribunal Rules 2009 R 39(1)
Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175

	Campbell v Flucker [2010] QCATA 70 *Coulton v Holcombe* (1986) 162 CLR 1 *Du v Batra* [2017] QCATA 138 *Ganter t/as Brisbane Kitchen Design v Bates & Anor* [2018] QCAT 446 *John v Wastestream Corporation Pty Ltd* [2012] QCATA 186 *Laporte v Bottoms English Lawyers Pty Ltd* 2019] QCATA21 *Makarenko v Page* [2018] QCAT 143 *Sali v SPC Limited* (1993) 67 ALJR 841 *Snell v Morgan* [2011] QCATA 316 *The Pot Man Pty Ltd v Reaoch* [2011] QCATA 318 *Thompson and Anor v Jedanhay Pty Ltd* [2012] QCATA 246 *Vella v Brooks* [2012] QCATA 245
APPEARANCES & REPRESENTATION:	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (QCAT Act).

REASONS FOR DECISION

[1] In this Minor Civil Dispute Jason Scott *C* Scott') sued Arowana Pty Ltd (t/a Choice IT Australia) ('Choice') to recover a payment of $735.90 and $4,500 for 'consequential losses'.

[2] In or about April 2017, the parties agreed that Choice would install a secure radio network ('the equipment') between Scott's two properties at Hyde Park, Townsville.

[3] The agreed price of the installation was $735.90, which Scott paid to Choice upon completion.

[4] But on or about 12 April 2018 the equipment ceased to operate. After a considerable delay, Choice replaced the equipment, which was urgently needed by Scott for the purposes of his specialist medical practice. For that service Choice charged Scott, and Scott paid Choice an additional sum of $799.90. The Tribunal accepted Scott's evidence that he paid for the replacement [1], contrary to Choice's denial of that claim[2], unsupported as it was by appearance ortestimony.)

[1] T page 4 line 40.
[2] Submissions of Choice paragraphs 8, 11.

[5] Subsequently Scott discovered, or was advised, that under the *Australian Consumer Law* (ACL) he was entitled to a refund or to have the repair or replacement work done by Choice free of charge.[3]

[6] Whereupon Scott brought these proceedings to recover the original price of $735.90, and $4,500, for loss of time and business while replacement of the system was delayed.

[7] In due course a date was set for the hearing and the Tribunal registry, as required[4], gave each party formal notice of the time and place of trial on 2 November 2018.

[8] An affidavit of service, sworn by Angela Blackford, of the Tribunal staff, on 21 September 2018, deposes that, on the same day, she posted a copy of the notice addressed to Choice at Unit 1, 22 Hills Street, Garbutt, Townsville.

[9] That address for Choice - Unit **1** 22 Garbutt Street Townsville - appears on the original notice of dispute. It also appears on the application for leave to appeal filed by Choice on 22 November 2018, and on the affidavit of service of that application, sworn by Roger Justin King on 26 February 2019.

[10] The hearing duly took place on 2 November 2018. Scott appeared in person. Choice did not appear.

[11J The acting magistrate, sitting as a member of the Tribunal, was satisfied that notice of hearing was duly served on Choice[5]. He also found that the equipment was not of acceptable quality, within the meaning of the ACL[6] and under an express warranty.

[12] In default of appearance by Choice, the tribunal proceeded to award Scott $799.90, and costs of $120.50. (Choice raises no issue about the difference of $64 between the amount claimed in the original application and the amount awarded.)

[13] But in the absence of any particulars of the alleged consequential loss ($4,500) that head of claim was dismissed. Scott does not challenge that decision.

[14] In proceeding to judgment the Tribunal relied on section 93 of the QCAT Act:

> **Deciding in absence of a person.** ... [I]f a person has not attended a hearing and the Tribunal is satisfied that the person has been given notice of the hearing ... The tribunal may hear and decide the matter in the person's absence.

[15] Choice now seeks leave [7] to appeal. If leave were granted, Choice would seek these orders:

> Reversal of the decision and reimbursement of the costs to [Choice] and three hours labour@$150 per hour for the removal and configuration of replacement device.

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[3] ACL s 261.
[4] QCAT Acts 92.
[5] Transcript of hearing 2 November 2018 ('T') page 2 lines 19-20.
[6] Transcript of hearing 2 November 2018 page 6 lines 39-40; Australian Consumer Lmv (ACL) ss 54, 59.
[7] Leave is required bys 142(3)(a).

[16] The grounds of appeal attempt to reopen the trial and to argue the merits as they might have been canvassed if Choice had then chosen to appear. But an application for leave is not an opportunity to re-run a trial.[8]

[17] More to the point, however, is the fact that the grounds of the proposed appeal do not refer to Choice's failure to appear at the hearing below; still less do they offer any explanation, satisfactory or otherwise, for that fact. On the material available it is by no means apparent that there is a reasonable explanation for the non-appearance. Nor does Choice deny receipt of the notice of hearing fixed for 2 November 2018.[9]

[18] In view of Choice's non-appearance at that time the Tribunal was entitled to proceed *ex parte.*[10] There is no reasonably arguable error of law in that decision. I have examined the material tendered in support of Scott's case, and I am satisfied that it is sufficient to sustain that case. Therefore, in the continuing absence of an explanation of non-appearance[11], and absent any dispute about service[12], no viable ground of appeal has been shown.

[19] The statutory right to an opportunity to be heard is adequately observed from the law's point of view by notice of the correct time and place of hearing.[13] Forgetting, for example, is not an acceptable explanation. [14] Finality in litigation, particularly in the minor civil dispute jurisdiction, is important to conserve the resources of the taxpayer and the Tribunal, and to ensure that other litigants are not unduly delayed. [15] The responsibility of litigants in QCAT to attend to their own interests is emphasised by a former President of the Tribunal:

> The QCAT statutory regime itself places obligations upon parties to take care in dealings with tribunal matters ... The legislation, and the demands upon public resources which fund QCAT, necessarily impose an expectation and an obligation upon a party that it acts in its own best interests, or accept the consequences. [16]

[20] Leave to appeal should be refused.

ORDER

The application for leave to appeal is dismissed.

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[8] Coulton v Holcombe (1986) 162 CLR 1 at 7; Snell v Morgan [2011] QCATA 316 at [10]; Thompson and Anor v Jedanhay Pty Ltd [2012] QCATA 246 at [28].
[9] And as to service by post see Acts Inte1pretation Act 1954 (Qld) ss 39, 39A; Queensland Civil and Administrative Tribunal Rules 2009 R 39(1)(b).
[10] Gantert/as Brisbane Kitchen Design v Bates & Anor [2018] QCAT 446 at [13]; Makarenko v Page [2018] QCAT 143.
[11] Vella v Brooks [2012] QCATA 245 at [5].
[12] Contrast cases of non-receipt of notice: John v Wastestream C01poration Pty Ltd [2012] QCATA 186.
[13] Laporte v Bottoms English Lmvyers Pty Ltd20l9] QCATA 21 at [16]
[14] Du v Batra [2017] QCATA 138.
[15] High Court decisions to this effect are Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175 at 217 and Sali v SPC Limited (1993) 67 ALJR 841 at 843-844; Campbell v Flucker [2010] QCATA 70 at [11]-[14]
[16] The Pot Man Pty Ltd v Reaoch [2011] QCATA 318 at [9]-[10] per Wilson P.