

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Russo v Prince Realty* [2019] QCATA 83

PARTIES: **MELISSA RUSSO**
(applicant)
v
PRINCE REALTY
(respondent)

APPLICATION NO: APL295-18

ORIGINATING APPLICATION NO/S: MCDT214/16 Holland Park

MATTER TYPE: Appeals

DELIVERED ON: 6 June 2019

HEARING DATE: 5 June 2019

HEARD AT: Brisbane

DECISION OF: Dr J R Forbes, Member

ORDERS: **1 The application for extension of time is dismissed.**

2 No order as to costs.

CATCHWORDS: APPEAL – LEAVE TO APPEAL – PROCEDURE – TIME, EXTENSION AND ABRIDGMENT – MINOR CIVIL DISPUTE - where two years delay in filing application for leave to appeal - whether grounds to extend time – where extension refused

Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 3, 4, 32, 61, 102, 143
Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175 at 217; [2009] HCA 27
Cachia v Hanes (1994) 179 CLR 403; [1994] HCA 14

Campbell v Flucker [2010] QCATA 70
Coulton v Holcombe (1986) 162 CLR 1
Herrington v McHugh [2011] QCATA 288
Pappas v Meikeljohn's Accountants [2017] QCATA 60
Payne v APN News & Media [2016] QCATA 140
Penney v Clarke [2016] QCATA 121
Reeve v Hamlyn [2015] QCATA 133
Robinson v Corr [2011] QCATA 302
The Pot Man Pty Ltd v Reaoch [2011] QCATA 318
Uren v Harcourts Broadbeach Waters [2018] QCATA 9
Von Reisner v Commonwealth of Australia (No 2) (2009)
262 ALR 430; [2009] FCAFC 172

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] It is a truth universally acknowledged that litigants of a certain disposition tend to transmute a simple matter into a procedural morass of ever more voluminous documentation. After an initial burst of activity the matter may long lie fallow, only to be reagitated to the prejudice of a party and to the efficient administration of justice.
- [2] On or about 7 June 2015 the parties entered into a residential tenancy agreement relating to premises at McGregor, Brisbane.
- [3] Subsequently, as it appears, the applicant ('Russo') – lawfully or otherwise - sublet parts of the premises to persons described as students. This not be pursued.
- [4] It was a term of the agreement that the respondent Prince Realty might sue or be sued, on behalf of the owner of the subject premises, in relation thereto.¹
- [5] On 13 September 2016 the tribunal ordered the applicant ('Russo') to pay Prince Realty the sum of \$4,686.95 for arrears of rent and compensation.
- [6] On 8 November 2018 Russo filed the present application for leave to appeal against that decision, and an application for extension of time to appeal.

Should time be extended?

¹ Clause 43.

- [7] The normal time limit for an application for leave to appeal is 28 days² after the ‘relevant day’, as defined in section 143(5). It follows that the application for leave is approximately two years and two months out of time. However, Russo now asks the tribunal to exercise its discretion³ to waive the prescribed limitation period.
- [8] In submissions appended to her application for extension time Russo offers no explanation or excuse for her delay. They do not address the present issue. The same is true of submissions appended to her application for leave to appeal. Those submissions consist largely of attempts to retry the proceedings at first instance, which is impermissible.⁴ The trial is not a ‘preliminary skirmish’.⁵
- [9] Russo’s proposed appeal alleges that the trial miscarried because it was not conducted by a judicial member. There is no substance in this contention. Indeed, it would be quite unusual for one of the strictly limited number of judicial members to deal with a minor civil dispute at first instance. It would also be impracticable, as there are hundreds of such proceedings per annum.
- [10] The respondent Prince Realty seeks an order that the application for leave be dismissed or struck out on several grounds, including delay, *res judicata* and abuse of process.
- [11] It suffices here to deal with the submission that the application for leave is so out of time that the section 61 discretion should not be exercised in the applicant’s favour.
- [12] An unexplained delay in excess of two years is quite extraordinary. The tribunal has a statutory obligation to act speedily.⁶

[T]he fair approach is to require that limits be complied with unless there is a compelling reason ... to the contrary. This is fair for all parties. Compliance with time limits will lead to disposition of matters in the most efficient and quick way. Compliance with time limits is also consistent with the public interest in finality of litigation.⁷

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.⁸

- [13] It may reasonably be said that the interest in finality has been disregarded in these proceedings.
- [14] In *Pappas* (above) the learned judicial member addressed these questions: Is there a good reason for delay? What is the strength of the case the applicant wishes to make? How long

² QCAT Act (‘the Act’) s 143(4) (b).

³ QCAT Act s 61.

⁴ *Robinson v Corr* [2011] QCATA 302 at [7]; *Payne v APN News & Media* [2016] QCATA 140 at [37].

⁵ *Coulton v Holcombe* (1986) 162 CLR 1 at 7.

⁶ QCAT Act ss 3(b), 4(c); *Campbell v Flucker* [2010] QCATA 70 at [12] per Wilson P.

⁷ *Pappas v Meikeljohn’s Accountants* [2017] QCATA 60 at [10] per Thomas QC. (Extension refused). See also *Reeve v Hamlyn* [2015] QCATA 133 at [35].

⁸ *The Pot Man Pty Ltd v Reaoch* [2011] QCATA 318 at [9]-[10] per Wilson P.

is the delay?⁹ No good reason for the delay is shown. The strength of the applicant's case (bearing in mind that an appeal is not a retrial) appears to be unimpressive, and the delay is extraordinary. 'A short delay is usually easier to excuse than a lengthy one.'¹⁰

- [15] In *Reeve v Hamlyn*¹¹ a delay of four months proved fatal: 'Applicants may need to show *exceptionally compelling* circumstances where the delay is protracted or extensive'.¹²
- [16] In *Uren v Harcourts Broadbeach Waters*¹³ a delay of just one month was seen as 'considerable'. Despite a claim of ill health (unsupported by medical evidence) an extension was refused.
- [17] In conferring the discretion to extend time, the Act directs the tribunal to consider whether an extension would cause 'prejudice or detriment' to a party.¹⁴ Justice, after all, is a two way street. After judgment is given, and the time for appeal expires, the successful party expects to enjoy the fruits of the judgment, and to get on with his or her life.¹⁵ Other members of the public are not to have their access to the tribunal unnecessarily and wastefully impeded.¹⁶ A party is not entitled to hold the possibility of an appeal as a Damoclean sword over an opponent's head for an inordinate period of time. In exercising the section 61 discretion, the tribunal must not condone or facilitate such a state of affairs.
- [18] In my considered view it would be quite unconscionable to grant the extremely long extension of time that the applicant Russo requires. The application sought must be refused.

Costs?

- [19] I note that the respondent seeks costs. If the parties were not self-represented this would, in my view, be a proper case for an award under section 102. But there is clear authority that costs are not claimable by parties who are not legally represented.¹⁷ There can be no costs order.

ORDERS

3 The application for extension of time is dismissed.

4 No order as to costs.

⁹ Pappas [2017] QCATA 60 at [9].

¹⁰ Ibid.

¹¹ [2015] QCATA 133. Likewise *Herrington v McHugh* [2011] QCATA 288 (10 weeks delay – refused); *Penney v Clarke* [2016] QCATA 121 (7 months delay - refused.)

¹² [2015] QCATA 133 per Carmody J (emphasis added).

¹³ [2018] QCATA 9.

¹⁴ Section 61(3).

¹⁵ *Reeve v Hamlyn* [2015] QCATA 133 at [37]-[38].

¹⁶ *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 at 217; [2009] HCA 27.

¹⁷ *Von Reisner v Commonwealth of Australia (No 2)*(2009) 262 ALR 430; [2009] FCAFC 172; *Cachia v Hanes* (1994) 179 CLR 403; [1994] HCA 14.