

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Roat v Gabris* [2019] QCATA 88

PARTIES: **JAMES ANTHONY ROAT**
(appellant)

v

GINA GABRIS
(respondent)

APPLICATION NO/S: APL083-18

ORIGINATING APPLICATION NO/S: MCDO1099-17 (Brisbane)

MATTER TYPE: Appeals

DELIVERED ON: 20 June 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS: **1. Leave to appeal granted.**
2. The appeal is allowed.
3. The decision made 26 February 2018 is set aside.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – where a contractor was engaged to build a fence – where a number of panels showed inferior paint repairs covering marks – where the contract was ordered to pay the cost of replacing six panels – where the homeowner filed an application for renewal of the decision out of time – where the application for renewal was effectively an application for leave to appeal against the previous decision – where through tribunal error notice of the application for renewal was not given to the contractor – whether the decision by Justices of the Peace to increase the award consequent on the application for renewal was an error of law

Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 130, s 146

Queensland Civil and Administrative Tribunal Rules 2009
(Qld), r 89

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

- [1] Ms Gabris owned a home at Jamboree Heights. She engaged Mr Roat to build her a fence at the property. He built a Colorbond fence for her as requested in about August 2013 for a cost of \$2,245.
- [2] After a year or so Ms Gabris noticed some blotches on some of the panels. They were made by Mr Roat using touch up paint to fix minor scratches made during construction.
- [3] Ms Gabris was not happy about that and from 2015 she asked him to replace all the panels at his cost, which he refused.
- [4] In 2017 Ms Gabris filed an application for minor civil dispute – consumer dispute in the tribunal seeking recovery of \$2,310, the money she said she had paid to Mr Roat, plus the filing fee of \$112.50. The matter came on for hearing before Justices of the Peace on 16 November 2017. The Justices of the Peace ordered Mr Roat pay Ms Gabris \$746 within 28 days of order.
- [5] On 5 February 2018 Ms Gabris filed an application for reopening, correction, renewal or amendment in the tribunal in which she asked that the tribunal renew the decision made by the Justices of the Peace and now award her \$2,800, the amount of a different quote for replacing all the panels. That second quote was obtained after the judgement was given on 16 November 2017. In the application for renewal she said that the contractor who have provided the first quote was not available and she had obtained a second quote which she described as the true cost of rectifying the damage.
- [6] The tribunal gave both parties notice of the application for renewal by email dated 7 February 2018 and asked for submissions, if any, by both parties by 22 February 2018. The email to Mr Roat was addressed incorrectly, however. He never received it. His address which was quite clear from both emails he had previously sent to the tribunal and from Ms Gabris’s initial application for minor civil dispute was jamesroat@ymail.com. Erroneously the registry forwarded the email to him at jamesroat@gmail.com.
- [7] Accordingly, Mr Roat had no notice of the application for renewal now claiming \$2,800 and made no submissions.
- [8] The application for renewal was placed before one of the original Justices of the Peace who ordered that both Mr Roat and Ms Gabris each contribute \$1,450 to the construction and removal of the existing fence and somewhat strangely also ordered a particular contractor construct the fence.
- [9] Mr Roat seeks leave to appeal that decision.

- [10] Given this is an appeal from a decision made in the Tribunal's minor civil dispute jurisdiction, leave to appeal must first be obtained before any appeal proceeds.¹
- [11] Leave to appeal will usually only be granted where an appeal is necessary to correct a substantial injustice to Mr Roat and where there is a reasonable argument that there is an error to be corrected.² There may be other relevant considerations, but these are primary.
- [12] Mr Roat has only one complaint and that is he was given no notice of the application for renewal seeking to increase the amount of the judgement against him.
- [13] Mr Roat has every right to complain. He was not given an opportunity to make submissions about the increase of the judgement sought from \$746 to \$2,800. He was entitled to know about it and entitled to make submissions about it. The error was made by the registry in sending the email asking for submissions to the wrong email address for Mr Roat. The error was not caused by anything Mr Roat did. Mr Roat was not accorded procedural fairness. That is an error of law. The decision cannot stand. Leave to appeal must be granted and the appeal allowed.
- [14] The question is, what is the appropriate order to make in the appeal in the circumstances? Given the error of law the Appeal Tribunal may confirm or amend the decision below, set aside that decision and substitute its own, or set aside the decision and return the matter to the tribunal below for reconsideration.³
- [15] I conclude it is appropriate for me to make a final decision in the matter.
- [16] The original decision was made on 16 November 2017. The application for renewal was not made until almost 3 months later.
- [17] By s 133 of the QCAT Act, a party may apply to the Tribunal for any renewal of a final decision if it is not possible for the tribunal's final decision in a proceeding to be complied with, or there are problems with interpreting, implementing or enforcing the tribunal's final decision in a proceeding.
- [18] There was no such difficulty before Ms Gabris. Ms Gabris's claim for renewal was really disputing and appealing the extent of the original decision. The Justices of the Peace did not award her the cost of replacing all the panels in the fence which comprised over 20 panels. They allowed part of her claim only based on their estimate of the cost of replacing 6 marked panels.⁴
- [19] Accordingly the renewal sought was beyond the scope of s 133.
- [20] But Ms Gabris has another problem with her application for renewal in any case. An application for renewal must be brought within the period stated in the rules⁵ and that period is 28 days after the relevant day.⁶ For the purpose of renewal relevant day is defined in the schedule to the rules as:

¹ QCAT Act, s 142(3)(a)(i).

² *Pickering v McArthur* [2005] QCA 294, [3].

³ QCAT Act, s 146.

⁴ Transcript page 1–28, line 18.

⁵ Section 133(3)(c)(i).

⁶ Rule 89(b), *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).

- (a) if the party making the application has requested written reasons for the decision under section 122 of the Act— the day the party is given the written reasons; or
- (b) otherwise—the day the party is given notice of the decision.

[21] Ms Gabris did not request reasons for decision under section 122 and accordingly she had 28 days from the day she was given notice of the decision to make an application for renewal. Notice of the decision was forwarded on 17 November 2017 and in the ordinary course of post would have been received by 23 November 2017. Accordingly, Ms Gabris had until 21 December 2017 to file an application for renewal. She was well out of time when she filed her application on 5 February 2018.

[22] The application for renewal should not have been allowed. The original decision made by the Justices of the Peace should have remained on foot.

[23] In the circumstances the appropriate order is to give leave to appeal, allow the appeal and set aside the order made by the Justices of the Peace on 26 February 2018. The practical consequence of this is that the original order made by the Justices of the Peace that Mr Roat pay Ms Gabris \$746 is restored and applies.