QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Chandwani v Diwan* [2019] QCATA 94
PARTIES:	**AMIT CHANDWANI** (appellant) **v** **RARSHANT DIWAN** (respondent)
APPLICATION NO/S:	APL015-19
ORIGINATING APPLICATION NO/S:	Minor Civil Dispute MCDO60365-17 (Brisbane)
MATTER TYPE:	Appeals
DELIVERED ON:	5 July 2019
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Senior Member Howard Member Howe
ORDERS:	**1. Leave to rely upon fresh evidence is refused.** **2. Leave to appeal is refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – ERROR OF LAW – WHAT IS – GENERALLY – where a migration agent charged for services rendered – where the client claimed that no statement of services or adequate statement of services was provided in breach of the *Migration Act* 1958 (Cth) – where the tribunal ordered the agent to refund all monies – where applicant also seeks to adduce fresh evidence – whether the initial client agreements in combination with subsequent invoices made an adequate statement of services – whether test for admission of fresh evidence has been satisfied *Migration Act* 1958 (Cth), s 313 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 32, s 142(3)(a)(i) *Frank Lanza Migration Services v Hotta* [2010] QCATA 86 *Pickering v McArthur* [2005] QCA 294 *Smart State Vehicle Rental Pty Ltd v Tri Asset Protection*

Systems Pty Ltd [2013] QCATA 16

REPRESENTATION:	
Applicant:	Dave Hadley solicitor of Local Legal Lawyers
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] Mr Diwan, is an Indian national who came to Australia in 2013 because he was offered a job in marketing. To work in Australia, he had to obtain a '457 visa' which he did through his proposed employer.

[2] That initial visa lasted for one year and then he had to apply for an extension. His employer directed him to Mr Chandwani, a registered migration agent.

[3] Mr Chandwani applied for an extension of his 457 visa. The extension was granted. That was in 2014. Mr Chandwani charged him $5,000 for the work done applying for the visa.

[4] Mr Chandwani was further engaged to make another application for Mr Diwan in respect of a '187 visa' in 2015, which would allow him to work permanently in regional Australia. For that work, he charged Mr Diwan $8,800.

[5] Mr Diwan had some trouble with the immigration authorities and his visa was cancelled. Mr Diwan was forced to leave Australia and return to India on 16 June 2018.

[6] Mr Diwan commenced proceedings in the Tribunal's minor civil dispute jurisdiction to recover the monies paid to Mr Chandwani. The basis of the claim was Mr Chandwani's alleged failure to render appropriate statements of services to him explaining the charges made for the immigration agent services provided as required under the *Migration Act* 1958 (Cth) ('*Migration Act*').

[7] The matter came on for hearing before a Member of the Tribunal on 21 September 2018. The matter involved some little complexity and accordingly the learned Member heard evidence from the parties and took submissions but also permitted them the opportunity to file additional material. They did that shortly after.

[8] The learned Member concluded that Mr Diwan was entitled to recover the monies paid to Mr Chandwani because he had not been provided with appropriate statements of service and ordered accordingly.

[9] Mr Chandwani is dissatisfied with that decision and now seeks to appeal.

[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 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 Chandwani refers in his application to the Tribunal having made errors of law. He offers no particulars of the errors of law claimed in the application.

[13] Mr Chandwani also filed submissions. In those submissions he refers to errors of fact and errors of law having occurred. It seems there is only one ground of appeal however, which is that the tribunal erred in its finding that Mr Chandwani did not provide an adequate statement of services to Mr Diwan as required under s 313 of the *Migration Act*.

Statement of services

[14] Under s 313 of the *Migration Act*:

> Persons charged for services to be given detailed statement of services
>
> (1) A registered migration agent is not entitled to be paid a fee or other reward for giving immigration assistance to another person (the *assisted person*) unless the agent gives the assisted person a statement of services.
>
> (2) A statement of services must set out:
>
> (a) particulars of each service performed; and
>
> (b) the charge made in respect of each such service.
>
> (3) An assisted person may recover the amount of a payment as a debt due to him or her if he or she:
>
> (a) made the payment to a registered migration agent for giving immigration assistance; and
>
> (b) did not receive a statement of services before making the payment; and
>
> (c) does not receive a statement of services within the period worked out in accordance with the regulations.
>
> (4) This section does not apply to the giving of immigration legal assistance by a lawyer.

[15] Under cover of his initial application, Mr Diwan filed a copy of a document entitled 'Tax invoice and statement of services' dated 3 November 2014, whereby Mr Chandwani charged him $5,000 for services rendered. He filed a second similarly described invoice dated 10 November 2015, charging $8,800.

---

1 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) s 142(3)(a)(i).
2 *Pickering v McArthur* [2005] QCA 294, 2 [3].

[16] Mr Chandwani filed a Response to Mr Diwan's application and attached two documents both entitled 'Migration Agent/Client Agreement', apparently executed by the parties on 31 October 2014 and on 10 November 2015, respectively.

[17] The agreement dated 31 October 2014 notes on the first page the service to be provided is for 'Visa category/class UC/subclass 457', the fees and charges are said to be set out in the schedule of fees at the end of the document and estimate of time to provide the services is one day to complete a 457 visa application. Further in the document under a heading 'Schedule of Fees' the fee type is noted as lump-sum and under a subheading entitled 'Statement of Services' it states:

> Part five of the code requires agents to set and charge a fee that is reasonable in the circumstances.
>
> For lump-sum agreements, the fee estimate for each service is as follows:
>
> 1. prepare a list of required documents from parents and their children
> 2. assessing the documents supplied
> 3. assisting in preparing DIBP application forms, work references (if required), skills assessments (if required)
> 4. preparing supporting submission for the application and lodging of application
> 5. assisting in arranging health and character requirements
> 6. monitoring application and entering any queries from DIBP
> 7. assisting in labour market testing and/or submissions to the Department of any class of employer sponsored visa
>
> | | |
> |---|---|
> | Total lump-sum | AUD $6000 |
> | Total lump-sum (overdue charges) 2013 F/Ref AMS | AUD $6550 |
> | Total | AUD $12,550 |

[18] Beneath that there is reference to a stage I and stage 2, and after stage 2 it states:

> 100% immediately after application/lodgement payment into operating account A$5,000 (as per invoice – 8)

[19] The agreement dated 10 November 2015 sets out almost identical wording for the statement of services to be rendered save that item 7 refers to 'inclusions of dependents if necessary – lodge paperwork relevant'.

[20] Under a similar reference to stage 2 it says:

> 100% immediately after application/lodgement payment into operating account A$8,800 AUD

[21] Mr Chandwani's complaint about the error made by the learned Member is that he failed to take into account the client agreements which, when taken in combination with the invoices, satisfied the requirements of the *Migration Act* (and Migration Agents' Code of Conduct).

[22] Mr Chandwani is wrong about that. The learned Member did consider their combined effect. He said in his reasons for decision:

> [29] …has Mr Chandwani satisfied the requirements of s 313 of the Migration Act by providing Mr Diwan with a statement of services in each case that sets out the particulars of each service performed and the charge made in respect of each such service and, further, with a statement of services within 28 days of the decision by the government to refuse his visa?
>
> [30] Mr Chandwani appears to address this question by arguing that the combined effect of the Migration Agent Client Agreement and the invoice describe the fee type, fee estimate, payment terms, stages, and the amounts to be charged and paid.9 However the Migration Agent Client Agreement sets out the services that may be provided by the migration agent and their respective costs, but does not, and cannot, represent a statement of services actually rendered, which is the essence of the statement of services required. Nor does the Tax Invoice & Statement of Services rendered on Mr Diwan by Mr Chandwani constitute a statement of services that sets out the particulars of each service performed and the charge made in respect of each such service. It represents simply a total cost for the 'block of work' involved.[3]

[23] Clearly the learned Member considered the combined effect of the client agreements and invoices but determined they failed to constitute a statement of services as required by the *Migration Act*.

[24] The learned Member was not in error in concluding so. The two client agreements were almost identical as to description of work the agent would perform to earn his money though there were different visas involved and presumably different considerations and, therefore, different work necessary. The statement of services set out in the client agreements and subsequent invoices are uninformative general descriptions lacking the specificity required by s 313 of the *Migration Act*.

[25] In *Frank Lanza Migration Services v Hotta*,[4] then President of the Tribunal, Justice Wilson, said about a similar matter:

> [6] …I am satisfied that the primary decision about the effect of s 313 was correct.
>
> [7] That section specifically provides that a registered migration agent is not entitled to be paid a fee or other award for giving immigration assistance to another person unless the agent gives the assisted person a statement of services which sets out particulars of each service performed, and the charge made in respect to each service. Mr Lanza's invoice fails to do that. It simply describes, in very general terms, the activities of providing immigration advice, preparation of an application, and dealings with the Queensland Government and the Department of Immigration and Citizenship – services alleged to be worth 'Exceeding $5,000.00, but say…'$2,500.00'. On any view, that is not an adequate statement of the particulars of each service performed.

---

3 *Diwan v Chandwani* [2018] QCAT 445.

4 [2010] QCATA 86.

[26] Mr Chandwani's client agreements and invoices are similarly in very general terms in like vein to those criticised by Justice Wilson as inadequate.

[27] Furthermore in respect of the first agreement dated 31 October 2014, the true charge was $5,000 because that was the amount invoiced. It was mentioned in the client agreement under the sub-heading 'Stage 2'. The charge immediately following the listed statement of services however is something entirely different, either $6,000 or $12,500. It is very hard to follow. There appears to be no statement of services in respect of the lesser 'Stage 2' charge of $5,000.

[28] The client agreements are ambiguous, uninformative, and lack particulars of each service to be performed and the charges to be made in respect of each such service as required by s 313 of the *Migration Act*.

[29] We see no error in the decision of the learned Member.

Fresh evidence

[30] Mr Chandwani made very late application to the Appeal Tribunal for leave to present fresh evidence on the appeal. The evidence amounts to emails dating back to 2014 and 2015, purporting to simply show copies of the client agreements were provided to Mr Diwan. There is also an email dated 2017, the purported relevance of which in the appeal proceeding is unclear.

[31] He does not explain why this material was not provided to the learned Member below. Not only could the material have been filed with his Response, it is not explained why it was not handed up at the hearing or filed subsequent to the hearing pursuant to the directions of the learned Member.

[32] The test for when fresh evidence will be allowed on appeal is 'when it could not, by reasonable diligence, have been obtained for the original hearing, is credible, and might have produced the opposite result'.[5] That is not the case here. There is no explanation given why it could not have been provided to the learned Member below. It would not change the result. It is unnecessary to deal with its credibility. Leave to adduce fresh evidence on appeal is refused.

Conclusions and orders

[33] There is no error here to be corrected. Leave to adduce fresh evidence is refused. Leave to appeal is refused.

---

5 *Smart State Vehicle Rental Pty Ltd v Tri Asset Protection Systems Pty Ltd* [2013] QCATA 16, 5 [26].