

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Haywood & Anor v Fletcher* [2020] QCATA 15

PARTIES: **MELISSA JAYNE HAYWOOD AND KIRSTY-LEE HAYWOOD**  
(applicant\appellant)

v

**CRAIG RONALD FLETCHER**  
(respondent)

APPLICATION NO/S: APL062-18

ORIGINATING APPLICATION NO/S: MCD177/18

MATTER TYPE: Appeals

DELIVERED ON: 31 January 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Oliver

ORDERS: **Leave to appeal is refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN NO APPEAL LIES – where dispute as to the existence of a residential tenancy agreement – where finding of fact that no residential tenancy agreement entered into between the parties – whether grounds for leave to appeal – whether the finding of fact open on the evidence – whether substantial injustice established.

*Queensland Civil and Administrative Tribunal Act* section 142(3)(a)(i)

*Terera & Anor v Clifford* [2017] QCA 181.  
*Robinson Helicopter Company Incorporated v McDermott* [2016] HCA 22, [43];  
*Lee v Lee; Hsu v RACQ Insurance Limited; Lee v RACQ Insurance Limited* [2018] QCA 104.

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and*

**REASONS FOR DECISION**

- [1] The respondent, Mr Fletcher, was the owner of a property at Redgum Road, New Beith. In August 2017 he wanted to sell the property however at that time it was occupied by Melissa Haywood, one of the applicants, and her family<sup>1</sup>. Melissa says that their occupation of the property was pursuant to a residential tenancy agreement (“the agreement”) entered into between herself and Mr Fletcher which was effective from September 2017. It is uncontested that there was a previous residential tenancy agreement between them Mr Fletcher and Melissa which expired on 15 September 2017.
- [2] Melissa’s position is that she signed the lease on 12 August 2018 and returned it to Mr Fletcher for him to sign, which she says he did. She produced a copy of an agreement with his signature on it. Mr Fletcher denies signing the agreement. He contends that there was no agreed residential tenancy agreement entered into between him and Melissa and she resided in the property on a periodic tenancy. He says further that the signature on the agreement produced by Melissa is a forgery.
- [3] The property was put on the market and a sale contract was entered into on or about 19 November 2017. Mr Fletcher required vacant possession for settlement and a notice to leave was given to Melissa. However, she was intransigent in her position that she was entitled to stay in the property until September 2018 in accordance with the agreement entered into and therefore would not give up possession.
- [4] On 24 January 2018, Mr Fletcher filed an application for a Minor Civil Dispute – Residential Tenancy in the Tribunal seeking an order that Melissa vacate the premises pursuant to the Form 10 Notice to Leave dated 11 December 2017. In the application Mr Fletcher sets out the basis of the application which, in particular, is the Notice to Leave on the grounds that he entered into a contract to sell the property but which contract had been terminated because he could not give vacant possession.
- [5] Melissa on her part, contended, as I have outlined above, that there was a residential tenancy agreement in place and there was no obligation on her to vacate the premises. She filed a number of documents and a statement setting out her position.
- [6] The matter came on for hearing, initially on 8 March 2018, before an Adjudicator but given that Melissa did not have sufficient time to prepare, the proceeding was adjourned over to 15 March 2018. After hearing from both parties, and considering the evidence that was put before him, the learned Adjudicator came to the conclusion that Melissa occupied the premises under a periodic tenancy agreement and not pursuant to the agreement as she alleged. He gave extensive and comprehensive reasons for coming to that decision given that both parties maintained their firm positions as to whether or not Mr Fletcher had signed the 12 September 2017 residential tenancy agreement.
- [7] In support of his case, Mr Fletcher had the signatures on the 2017 agreement examined by a forensic expert, John Heath Document Consultancies, and a report was prepared

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<sup>1</sup> I shall refer to the applicants by Christian name for ease of reference.

by Mr Heath. Attached to this report was a copy of the signatures on the 2017 agreement together with significant parts from other documents and in particular, the signatures on the 2016 residential tenancy agreement which Mr Fletcher agrees he signed. So a comparison was made between his signature on the 2017 agreement and on the 2016 agreement. With respect to those signatures, Mr Heath was of the view, and expressed the expert opinion that, the signatures appearing on the 2017 agreement had been '*cut and paste*' from the 2016 agreement. In addition to that, there were express denials during the course of the hearing from Mr Fletcher and from the witness to his signature, Alsace Fletcher, that they did not sign the 2017 agreement.

- [8] It follows from that evidence alone, it was open to the learned Adjudicator to conclude that Mr Fletcher did not sign the 2017 agreement. However, he went further than that.
- [9] During the course of the hearing the learned Adjudicator sought the assistance from Melissa in trying to identify some other contemporaneous evidence to support her position that the 2017 agreement was signed by Mr Fletcher and bound the parties. He expressly asked her about text messages, email exchanges and conversations where there might have been some acknowledgement by Mr Fletcher that he was bound by the 2017 agreement. Also as Mr Fletcher had appointed Stewart Marr, of Professionals Logan to sell the property, Melissa was asked if there was any evidence from him of similar nature to support her case.
- [10] Despite going through a number of text messages and emails, the learned Adjudicator was unable to identify any evidence of a corroborative nature which would support Melissa's position. He made it abundantly clear to her that in circumstances where the evidence was as to whether the parties were bound by the 2017 agreement was diametrically opposed, some independent objective evidence supporting one case or the other would be of assistance.
- [11] In his reasons for his decision, he made reference to the fact that nowhere was there any protest by Melissa by email or text asserting that she had a signed residential tenancy agreement and therefore, was not obliged to give up vacant possession. There were other references to such things as a text message where Melissa was notified that "*My father's coming to get the keys*" and there was no response. There are a number of text messages between Melissa and Ms Fletcher throughout January to which Melissa did not respond.
- [12] Then of course there is the ongoing conflict with the agent, Stewart Marr, about inspections. Melissa knew that the property was on the market and in fact, had put in an offer to buy. The ongoing dispute about inspection which at times became quite heated as is evident from the material filed. At no stage during this period of conflict with Stewart Marr was any issue raised about her not having to give up the premises because of the tenancy agreement.
- [13] Bearing in mind that the learned adjudicator firstly, had the evidence of Mr Heath, and secondly, despite giving Melissa every possible opportunity to provide some corroborative evidence, nothing came forward to support her case. It was therefore open for him to make the finding that he did in concluding that there was no residential tenancy agreement.

- [14] An appeal from a minor civil dispute matter is not as of right. Section 142(3)(a)(i) of the *Queensland Civil and Administrative Tribunal Act* (“QCAT Act”) provides that an appeal against the decision can only be made if the party has obtained the appeal tribunal’s leave to appeal.
- [15] For the appeal tribunal to give leave to appeal, the appellant must identify some error of law or other good reasons to interfere with the original tribunal as constituted. The issues raised on the question of whether to grant leave to appeal have been summarised in the recent case of *Terera & Anor v Clifford*,<sup>2</sup> they are whether:
- (a) an appeal is necessary to correct a substantial injustice;
  - (b) there is a reasonable argument that there is an error to be corrected; and
  - (c) on the question of whether leave to appeal might be given, the court usually makes some preliminary assessment of the prospects of the proposed appeal.
- [16] There is one other consideration: the application for leave to appeal or appeal is not a rehearing on the merits of the matter that was before the primary decision maker/s to achieve a different outcome.<sup>3</sup> The Appeal Tribunal will not readily interfere with findings of fact of the tribunal at first instance, unless they are demonstrated to be wrong by ‘incontrovertible facts or uncontested testimony’, or they are ‘glaringly improbable’ or ‘contrary to compelling inferences’.<sup>4</sup>
- [17] The Tribunal’s decision in this matter revolved around a question of fact, that is whether there existed a binding residential tenancy agreement between the parties. The learned Adjudicator found as a fact there was not on the evidence before him. That conclusion was clearly open on the evidence. Therefore there is no basis for this Appeal Tribunal to overturn that finding of fact. As a consequence leave to appeal is refused.

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<sup>2</sup> [2017] QCA 181.

<sup>3</sup> *Bradlyn Nominees Pty Ltd v Saikovski* [2012] QCATA 39.

<sup>4</sup> *Robinson Helicopter Company Incorporated v McDermott* [2016] HCA 22, [43]; followed in *Lee v Lee*; *Hsu v RACQ Insurance Limited*; *Lee v RACQ Insurance Limited* [2018] QCA 104.