QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Sydes v Tate t/as Mr Fixation* [2020] QCATA 22
PARTIES:	**MICHAEL J SYDES** (appellant) **v** **AARON TATE T/AS MR FIXATION** (respondent)
APPLICATION NO/S:	APL201-18
ORIGINATING APPLICATION NO/S:	MCDO0085/18
MATTER TYPE:	Appeals
DELIVERED ON:	14 February 2020
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Member Hughes
ORDERS:	**Leave to appeal refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – PARTICULAR CASES – CONTROL OVER PROCEEDINGS – where allegation of denial of procedural fairness – where Tribunal has mandate to deal with matters quickly – where appellant had four days to consider respondent's statement of evidence – where respondent's statement was eight pages in length – where appellant did not raise any concerns or seek adjournment at hearing – where appellant had enough time to consider evidence and respond – where appellant was afforded procedural fairness within context of Tribunal's minor civil disputes jurisdiction APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – interference with findings of Tribunal below – functions of appellate Tribunal – where findings open on evidence – where no reasonably arguable case of Tribunal in error – where no reasonable prospect of substantive relief on appeal *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 3, s 4, s 28 *Aon Risk Services Australia Ltd v Australian National*

University (2009) 239 CLR 175
Bradlyn Nominees Pty Ltd v Saikovski [2012] QCATA 39
Cachia v Grech [2009] NSWCA 232
Clarke v Japan Machines (Australia) Pty Ltd [1984] 1 Qd R 404
Creek v Raine & Horne Real Estate Mossman [2011] QCATA 226
Glenwood Properties Pty Ltd v Delmoss Pty Ltd [1986] 2 Qd R 388
Kioa v West (1985) 159 CLR 550
McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd [1989] 2 Qd R 577
Minister for Immigration and Citizenship v SZMDS & Anor (2010) 240 CLR 611
Piric & Anor v Claudia Tillier Holdings Pty Ltd [2012] QCATA 152
QUYD Pty Ltd v Marvass Pty Ltd [2009] 1 Qd R 41
Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe [2013] QCATA 212
Slater v Wilkes [2012] QCATA 12

REPRESENTATION:

Applicants: 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] Two Justices of the Peace dismissed Michael J Sydes's claim of $968.00 for alleged defective workmanship by Aaron Tate.

[2] Mr Tate has applied for leave to appeal that decision.

[3] In determining whether to grant leave, the Tribunal will consider established principles including:

(a) whether there is a reasonably arguable case of error in the primary decision;[1]

(b) whether there is a reasonable prospect that the appellant will obtain substantive relief;[2]

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1 *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.
2 *Cachia v Grech* [2009] NSWCA 232, 2.

(c) whether leave is needed to correct a substantial injustice caused by some error;[3] and

(d) whether there is a question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage.[4]

[4] Mr Syder's grounds of appeal were that he was denied procedural fairness and the learned Justices' findings of fact were not open on the evidence.

Did the Tribunal afford Mr Sydes procedural fairness?

[5] Mr Syder said he did not receive a copy of Mr Tate's "affidavit" until 21 June 2018 which did not afford him "time to digest".

[6] The Tribunal must also observe procedural fairness.[5] However, this is a flexible notion that must be commensurate with the nature and demands of the jurisdiction – it is a matter of construction of a particular statutory power.[6] The requirements of procedural fairness must be adjusted to the statutory framework governing the Tribunal.[7]

[7] The Tribunal's statutory mandate to conduct proceedings in an informal way that minimises costs to parties and is as quick as is consistent with achieving justice[8] is at its most acute in the busy and demanding minor civil disputes jurisdiction, where thousands of applications are processed and determined each year.[9] Within this context, the Tribunal is not bound by the rules of evidence,[10] and may inform itself in any way it considers appropriate.[11]

[8] The minor civil disputes jurisdiction requires the Tribunal to deal with matters fairly, quickly and economically.[12] This means that parties may not be aware of all of the material relied upon by their opponent before the hearing. That is not the case here. The hearing proceeded on 25 June 2018. Mr Sydes therefore had four days to consider Mr Tate's statement, itself a mere eight pages in length. The statement is unremarkable in both length and content. Mr Sydes had enough time to consider its content and respond, as shown by him not raising any concerns or seeking a short adjournment at the hearing. He was afforded procedural fairness within the context of the Tribunal's minor civil disputes jurisdiction.

[9] This ground of appeal is dismissed.

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3 *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.
4 *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388, 389; *McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577, 577, 580.
5 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 28(3)(a) ('QCAT Act').
6 *Kioa v West* (1985) 159 CLR 550, 584-585.
7 *Creek v Raine & Horne Real Estate Mossman* [2011] QCATA 226, [15] (Wilson J).
8 QCAT Act, s 4(c).
9 *Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe* [2013] QCATA 212, [46] (Wilson J).
10 QCAT Act, s 28(3)(b).
11 Ibid, s 28(3)(c).
12 Ibid, s 3, s 4.

Were the findings open on the evidence?

[10] In challenging the learned Justices' findings, Mr Sydes sought to rely upon fresh evidence including photographs, text messages and a statement by one David Yang dated 27 July 2018. Apart from this, Mr Sydes sought to reargue his case.

[11] The Appeal Tribunal will only accept fresh evidence if it was not reasonably available at the time the proceeding was heard and determined. Ordinarily, an application for leave to adduce fresh evidence must satisfy three tests:[13]

(a) Could the parties have obtained the evidence with reasonable diligence for use at the trial?

(b) If allowed, would the evidence probably have an important impact on the result of the case?

(c) Is the evidence credible?

[12] Mr Kim had an obligation to act in his own best interests, including providing all evidence at the hearing to support his case:

> The statutory regime under which QCAT operates places obligations upon parties themselves to take care in their dealings with Tribunal matters, and to act in their own best interests. QCAT's resources for the resolution of disputes are in high demand and serve, as the High Court has recently observed in relation to court resources, '…*the public as a whole, not merely the parties to the proceedings*'. Finality in litigation is highly desirable, because any further action beyond the hearing can be costly and unnecessarily burdensome on the parties.[14]

[13] Mr Sydes did not provide any explanation for why he did not provide his fresh evidence at the hearing. The onus was always upon Mr Sydes to present his case and bring all relevant material and witnesses to the hearing. He did not and his failure to provide a reasonable explanation is itself sufficient to not allow the fresh evidence.

[14] However, even if the fresh evidence were admitted into evidence, it has little evidential weight and is unlikely to affect the outcome of the case. The photographs are not dated, nor is it clear by whom they were taken. Similarly, the text messages do not show the parties to the alleged communications and are not attached to any sworn statement. Moreover, none of the fresh evidence addresses the learned Justices' key finding that Mr Sydes terminated the contract without due cause by not allowing Mr Tate sufficient time to finish the work.[15]

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13 *Clarke v Japan Machines (Australia) Pty Ltd* [1984] 1 Qd R 404, 408.

14 *Creek v Raine & Horne Real Estate Mossman* [2011] QCATA 226, [13], citing with approval *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175, 217.

15 Transcript, page 1-14, lines 5 to 6, 14 to 16, 27, 32 to 33; page 1-16, lines 43 to 44.

[15] At most, the fresh evidence allows the drawing of a possible alternative inference. But it does not prove this. Attempting to explain away the learned Justices' finding with a possible alternative inference does not demonstrate error by the learned Justices. A decision cannot properly be called erroneous, simply because the learned Justices preferred one conclusion to another possible conclusion.[16]

[16] Having considered material filed with the application and oral evidence from both parties at the hearing, the learned Justices were in the best position to assess credit and make findings accordingly. Nothing in the material or the transcript persuades the Appeal Tribunal that the learned Justices' findings were not open to them. The findings were open on the evidence.

[17] The appeal process is not an opportunity for a party to again present their case.[17] It is the means to correct an error by the Tribunal that decided the proceeding.[18] The minor civil disputes jurisdiction requires the Tribunal to deal with matters fairly, quickly and economically.[19] A party who does not provide all their relevant evidence at the hearing cannot expect a different outcome by simply re-arguing their case on appeal.

[18] The Tribunal's decision was therefore appropriate and I can find no reason to come to a different view.

[19] This ground of appeal is dismissed.

Should the Appeal Tribunal grant leave to appeal?

[20] Leave will not be granted where a party simply desires to re-argue the case on existing or additional evidence.[20] A clear purpose of the requirement for leave, before a party has the right to appeal, is to prevent any attempt to simply conduct a retrial on the merits of the case.[21] An application for leave to appeal is not, and should not be an attempt to reargue a party's case at the initial hearing.[22]

[21] Having read the transcript and considered the evidence, I find nothing to indicate that the learned Justices acted on a wrong principle, or made mistakes of fact affecting their decision, or were influenced by irrelevant matters. The evidence was capable of supporting the learned Justices' conclusions.

[22] There is no question of general importance for the Appeal Tribunal to determine. There is no reasonably arguable case that the Tribunal was in error. There is no reasonable prospect of substantive relief on appeal. There is no evidence that a substantial injustice will result if leave is not granted.

[23] Leave to appeal is refused.

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16 *Slater v Wilkes* [2012] QCATA 12, [6], citing *Minister for Immigration and Citizenship v SZMDS & Anor* (2010) 240 CLR 611.
17 *Bradlyn Nominees Pty Ltd v Saikovski* [2012] QCATA 39, [9].
18 Ibid.
19 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 3, s 4.
20 *Piric & Anor v Claudia Tillier Holdings Pty Ltd* [2012] QCATA 152, [12] (Wilson J).
21 Ibid.
22 *Bradlyn Nominees Pty Ltd v Saikovski* [2012] QCATA 39.