

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Low v Laing-Short* [2020] QCATA 69

PARTIES: **RICK LOW**  
(applicant/appellant)

v

**VICTORIA LAING-SHORT**  
(respondent)

APPLICATION NO/S: APL 034-20

ORIGINATING APPLICATION NO/S: Q 22/19

MATTER TYPE: Appeals

DELIVERED ON: 12 May 2020

HEARING DATE: On the Papers

HEARD AT: Brisbane

DECISION OF: Member Fitzpatrick

ORDERS:

- 1. Extension of time to seek reasons for refusal to re-open the proceedings is refused.**
- 2. Extension of time to seek leave to appeal or appeal is refused.**
- 3. The application for a stay of the decision dated 10 September 2019 in Q 22/19 is dismissed.**

CATCHWORDS: APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – EXTENSION OF TIME – where the respondent unsuccessfully sought an adjournment of the minor civil debt hearing – where the respondent did not appear at the hearing or give evidence - where subsequent unsuccessful application to re-open – where the respondent seeks an extension of time to seek reasons for the refusal to re-open, a stay and for leave to appeal or appeal.

*Queensland Civil and Administrative Tribunal Act 2009* (Qld) s3(b), s47, s61, s139(5), s142(3)

*Reeve v Hamlyn* [2015] QCATA 133.

REPRESENTATION:

Applicant: Mr O El-Hissi of NOH Legal, Level 13, 200 Queen Street,  
Melbourne, Victoria.

Respondent: Self-represented.

APPEARANCES: This matter was heard and determined on the papers pursuant to section 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

### REASONS FOR DECISION

- [1] Mr Low was the respondent to an application for a minor civil dispute – minor debt brought by Ms Laing-Short, seeking recovery of \$13,774.55 for unpaid invoices for consultancy services.
- [2] The following is a relevant chronology:
- (a) Minor civil dispute – minor debt filed by Ms Laing-Short on 5 February 2019.
  - (b) 11 April 2019 Mr Low applied to set aside a default decision given on 6 March 2019 against him.
  - (c) 30 April 2019 application to set aside the default decision was granted.
  - (d) 10 September 2019, a hearing took place when:
    - (i) an application made orally seeking an adjournment was refused;
    - (ii) leave for legal representation was granted;
    - (iii) Mr Low was ordered to pay Ms Laing-Short \$13,706.20 within 7 days.
  - (e) 30 September 2019 Mr Low applied to re-open the proceedings and for a stay of the 10 September 2019 judgment.
  - (f) 8 October 2019 stay of the decision refused.
  - (g) 22 October 2019 Mr Low's application to re-open the matter refused.
  - (h) 27 December 2019 Mr Low requested reasons for the refusal of his application to re-open the 10 September 2019 decision.
  - (i) 7 February 2020 Mr Low filed an application for leave to appeal or appeal from the 10 September 2019 decision and the decision refusing the stay.
  - (j) On 7 February 2020 Mr Low filed an application seeking a stay of the decision made 10 September 2019.
  - (k) On 7 February 2020 Mr Low filed an application seeking an order granting an extension of time:
    - (i) to request reasons for the refusal to re-open the proceeding to the date when the request was made on 27 December 2019; and further that the applicant be provided with reasons for the refusal to re-open the proceeding;

- (ii) to file and serve an application for leave to appeal or appeal the 10 December 2019 decision and the 22 October 2019 decision to a date which is 14 days after receipt by Mr Low of the reasons for refusal to re-open the proceeding; or alternatively
- (iii) to file and serve an application for leave to appeal or appeal the decision made on 10 December 2019 to a date which is 14 days after the date of any order in respect of the application filed 7 February 2020 seeking an extension of time.

- [3] Pursuant to section 61 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act), the Tribunal has power to extend a time limit fixed for procedural requirements under the Act.
- [4] Because this matter involves a minor civil debt, leave to appeal is required under section 142(3) of the QCAT Act.
- [5] Pursuant to section 143 (3) an application for leave to appeal must be made within 28 days after the “relevant day”. In a case where an application for re-opening is made, the relevant day is the day the application for re-opening is finally dealt with. Thus, the application for leave to appeal or appeal, should have been filed within 28 days of 22 October 2019. That is by 19 November 2019.
- [6] Mr Low filed his application for leave to appeal or appeal on 7 February 2020, some 108 days or 3 months and 16 days after the relevant day. I note that Mr Low is not seeking an extension of time to 7 February 2020 but rather to some later time dependent on receipt of the reasons for refusal of the re-opening application.
- [7] In the case of the 22 October 2019 decision to refuse to re-open the proceedings, Mr Low, was entitled under section 122 of the QCAT Act to seek reasons for the refusal within 14 days of 22 October 2019. That is by 5 November 2019. Mr Low did so on 27 December 2019, some 52 days or 1 month and 22 days after the last date for making the request.
- [8] By section 139(5) of the QCAT Act, Mr Low is not entitled to appeal the decision made on 22 October 2019 to refuse to re-open the proceeding. That is a separate matter to an entitlement to seek reasons for the decision within the prescribed time frame. If Mr Low had sought reasons within the 14 day time frame from the date of the decision he would have received the reasons. He did not do so, that is why he is now seeking an extension of time to request reasons. The Tribunal file bears an abridged note that the application was refused on the basis that no re-opening ground was demonstrated. The Tribunal file also reveals that reasons for the decision were read into the transcript on 5 November 2019. The Tribunal file does not hold a copy of the transcript, however, Mr Low is able to obtain a transcript or audio recording.
- [9] In the annexure to Mr Low’s application for extension of time he asserts that the order of the tribunal made on 10 September 2019 is incorrect in law and fact. He sets out his defence to the original claim. Mr Low says that he requires the reasons for refusal of the re-opening application in order to further articulate the appeal notice. Mr Low has not said how the reasons for refusal of the re-opening application may impact on any grounds Mr Low has for an application for leave to appeal.

- [10] Mr Low also says that the decision refusing to re-open the proceeding made on 22 October 2019 is incorrect in law and fact. As noted earlier that decision is final.
- [11] Mr Low offers no explanation for the delay in filing the application for leave to appeal or appeal. He merely says that there has been no unreasonable delay in bringing the application for extension of time. Mr Low says that the failure to seek reasons for the refusal to re-open the proceedings was caused by “inadvertent omission”.
- [12] Mr Low obviously disagrees with the decision of 10 September 2019. He sets out his defence and contends that in the circumstances it would be “grossly unjust” for him to be required to pay money to Ms Laing-Short.
- [13] The application for extension of relevant time frames was served on Ms Laing-Short. Ms Laing-Short objects to the applications and makes the point that Mr Low has been legally represented throughout this matter and accordingly should be held to the time frames prescribed in the QCAT Act. She says that there is no valid reason to submit an appeal at such a late date and that all information has been in Mr Low’s possession for two years, but he failed to provide it at the hearing.

**Application to extend time to seek reasons for refusal to re-open proceedings**

- [14] I refuse to extend time to 27 December 2019 for Mr Low to seek reasons for refusal to re-open the proceedings. There is a relatively short time prescribed for such a request. Mr Low falls well outside the time frame. I do not consider inadvertence to be a sufficient explanation nor excuse for the delay, particularly where he is legally represented.

**Application to extend time to seek leave to appeal or appeal**

- [15] In considering whether to allow a request for an extension of time to file an application for leave to appeal or appeal, relevant considerations are:
- (a) the duration of the delay;
  - (b) whether there is a satisfactory explanation for the delay;
  - (c) the merits of the application and its prospects of success;
  - (d) the likelihood of any prejudice to other parties or potential parties; and
  - (e) whether the extension of time is in the interests of justice.<sup>1</sup>

*Duration of the delay*

- [16] I consider that a delay of 108 days or 3 months and 16 days to be inordinate, particularly as Mr Low was legally represented. The Tribunal is required to deal with matters efficiently and as expediently as practicable.<sup>2</sup>
- [17] Given such a long delay, Mr Low needs to demonstrate exceptionally compelling circumstances to justify grant of an extension of time. There must be “*evidence of exceptional or unusual circumstances, outside the ordinary vicissitudes of life or commercial activities, which causes, or materially contributes to, the delay.*”<sup>3</sup>

---

<sup>1</sup> *Reeve v Hamlyn* [2015] QCATA 133 at [36]

<sup>2</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s3(b).

<sup>3</sup> *Reeve*, op.cit at [[37] and [42].

[18] No explanation at all has been offered.

*Merits of the application and prospects*

[19] As to the merits of the application for leave to appeal, I note from Ms Laing-Short's submissions that a hearing was conducted before the Adjudicator in this matter. Mr Low was legally represented at the hearing, having some months earlier succeeded in having a default decision against him set aside.

[20] In support of his application for leave to appeal or appeal, Mr Low raises the following matters as relevant to the dispute between the parties:

- (a) whether he was a party to an agreement with Ms Laing-Short, pursuant to which she might render invoices for consultancy services;
- (b) whether Ms Laing-Short purported to give legal advice and to charge for legal services when she was not in fact a legal practitioner;
- (c) whether, when invoices have been issued by NQ Commercial Finance Pty Ltd trading as "Samsa" Ms Laing-Short is entitled to issue proceedings in her own name for money due and owing, that is whether Ms Laing-Short was the proper applicant in the proceedings;
- (d) the significance of NQ Commercial Finance Pty Ltd being deregistered from 14 October 2018;
- (e) whether on the facts any moneys are due and owing to Ms Laing-Short.

[21] Mr Low complains that, when he was not granted an adjournment of the minor civil dispute hearing, evidence from the bar table, in support of his defence was not accepted. That is only proper, given that evidence purportedly given in that way by a legal representative could never be tested. Despite that, the legal representative was pressed on many occasions by the Adjudicator to provide any documents in his brief which tended to support the allegations being made. The legal representative was unable to do so.

[22] Mr Low also refers to new information in a defence filed by Ms Laing-Short in other proceedings between the parties in the Magistrates Court, which he says is relevant to this matter. Having read that defence I do not think it contains the admission Mr Low asserts - that Ms Laing-Short was providing legal services at the time she performed work the subject of the minor civil dispute. On the contrary the defence reflects the evidence given by Ms Laing-Short that the services provided by her the subject of the two invoices were not legal services.

[23] Mr Low seeks leave to appeal the decision on the following bases:

- (a) he did not file a response in the proceeding in reliance on Rule 43 of the Rules and pending the outcome of a complaint to the Legal Services Commissioner about Ms Laing-Short;
- (b) he suffered severe prejudice in not being granted an adjournment, noting the amount of material annexed to the submission in support of the defence;
- (c) it is in the public interest for the Decision to be set aside and the application for leave to be granted because of Ms Laing-Short's conduct in allegedly holding herself out to be a legal practitioner and because that conduct is the subject of proceedings in the Magistrate's Court.

- (d) the moneys claimed are not due and payable.
- [24] It is flagged that if the application for leave to appeal is granted an adjournment will be sought to await the outcome of the Magistrates Court proceedings involving the parties.
- [25] A large part of Mr Low's complaint is that he was not granted an adjournment of the minor civil debt hearing. It appears that he now wishes to put before the Appeal Tribunal the evidence he may have relied upon if he had attended the hearing on 10 September 2019. Mr Low did not attend the hearing. I assume he was very confident that an adjournment would be granted. His confidence was misplaced given that the application was only made orally on the morning of the hearing and by a legal representative, where no leave for legal representation had previously been sought or granted. No material supporting the alleged grounds for an adjournment was presented by that legal representative.
- [26] Mr Low did not file a response to the minor debt claim as contemplated by Rule 45 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld). An appeal is not an opportunity to conduct a better prepared defence on the second attempt.
- [27] I have listened to the audio recording of proceedings on 10 September 2019. It is apparent that the Adjudicator turned his mind to the matters raised on behalf of Mr Low at the hearing.
- [28] The Adjudicator gave a reasoned decision in the matter addressing matters raised by the legal representative for Mr Low as to whether Ms Laing-Short was providing legal services whilst she did not hold a practising certificate and could therefore not recover any moneys for work performed; the veracity and effect of an agreement dated 15 May 2018 between the parties for the performance of consultancy services; whether the work performed by Ms Laing-Short amounted to the provision of legal services; whether there was a debt due and owing between the parties for consultancy services and for a termination payment under the agreement.
- [29] The legal representative for Mr Low did not raise the issue of whether the invoices relied upon by Ms Laing-Short were issued in the wrong name and that there was therefore no obligation on the part of Mr Low to pay the invoices.
- [30] The Adjudicator decided that he must proceed on the evidence before the Tribunal and found that Ms Laing-Short established a debt.
- [31] The Adjudicator relied on the written agreement between the parties as establishing a basis for the work performed by Ms Laing-Short and the invoices delivered by her. I note the agreement attached to Ms Laing-Short's application is described as: "a formal agreement between Victoria Laing-Short and Rick Low as personal entities". Further the agreement states: "This agreement terminates and replaces any prior agreement that was held between the parties in their respective company names."
- [32] In response to the argument of behalf of Mr Low that prior dealings between the parties imply legal services were being provided, the Adjudicator relied upon the term of the agreement that it terminates and replaces any prior agreement that had been held between the parties in their respective company names. The Adjudicator said that on the evidence there could be no presumption that Ms Laing-Short was providing legal services when not entitled at law to do so. He said that the party asserting that legal services were being performed bears the burden of proving that allegation. There was no evidence tendered by the respondent.

- [33] In light of all these matters, I am unable to determine that Mr Low has reasonable prospects of success in any appeal.

*Prejudice to another party*

- [34] Ms Laing-Short is suffering from a serious illness. Proceedings were commenced over twelve months ago. I accept that any further delay is prejudicial to Ms Laing-Short, particularly given the other factors canvassed in this decision.

*Interests of Justice*

- [35] Mr Low submits that because of the seriousness of his allegation in relation to Ms Laing-Short providing legal services when not legally entitled to do so it is in the interests of justice that his application is granted. I do not accept that submission in light of the contrary evidence given at the hearing and lack of any evidence from Mr Low on the point.
- [36] Mr Low has allowed a default judgment to be entered against him, he has failed to file a response to the proceedings, he sought a late adjournment of the hearing in the matter and has filed an application for leave to appeal or appeal out of time with no explanation for the delay. His conduct is not meritorious, and I do not consider it to be in the interests of justice for an extension of time to be granted.

*Conclusion*

- [37] For all these reasons, I refuse to grant Mr Low an extension of time to file an application for leave to appeal or appeal the decision made on 10 September 2019.

**Application for a stay of the 10 September 2019 decision**

- [38] An application for a stay pending a decision in the re-opening application was refused by decision dated 8 October 2019.
- [39] The further application for a stay of the decision pending any appeal decision is of no utility in view of my decision to refuse an extension of time to file the application for leave to appeal or appeal. The application is dismissed pursuant to s47(1) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

**Orders**

- [40] The orders are as follows:
- (a) Extension of time to seek reasons for refusal to re-open the proceedings is refused.
  - (b) Extension of time to seek leave to appeal or appeal is refused.
  - (c) The application for a stay of the decision dated 10 September 2019 in Q 22/19 is dismissed.