

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Bruce v Ridgway* [2020] QCATA 95

PARTIES: **NIGEL BRUCE**
(appellant)

v

JOHN RIDGWAY
(respondent)

APPLICATION NO/S: APL165-19

ORIGINATING APPLICATION NO/S: MCDO60969/18

MATTER TYPE: Appeals

DELIVERED ON: 1 June 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS:

- 1. Nigel Bruce is taken to have made an application for the proceeding to be reopened under section 138 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).**
- 2. Nigel Bruce is taken not to have made an application or appeal under section 143 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).**
- 3. Nigel Bruce must file with the Tribunal two (2) copies and give to John Ridgway one (1) copy of his submissions and evidence to support the application for the proceeding to be reopened by 4.00pm on 16 June 2020.**
- 4. John Ridgway must file with the Tribunal two (2) copies and give to Nigel Bruce one (1) copy of his submissions and evidence in reply by 4.00pm by 30 June 2020.**
- 5. The matter is referred to the Tribunal to decide whether the proceeding should be reopened not before 1 July 2020.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – where appellant did not attend original hearing – where appellant did not raise any error but was

effectively seeking reopening on grounds that he had reasonable excuse for not attending – where Appeal Tribunal may refer matter to Tribunal to decide whether proceeding should be reopened – whether reopening ground – whether reasonable excuse for not attending hearing

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 4, s 28, s 138, s 143A, Schedule 3

Aon Risk Services Aust Ltd v Australian National University (2009) 239 CLR 175
Breezeway Developments Pty Ltd v ADG Hydraulics Pty Ltd [2010] QCATA 69
Creek v Raine & Horne Mossman [2011] QCATA 226
Harris v Foxworth Pty Ltd [2013] QCATA 133
Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe [2013] QCATA 212
Ren v Poolworld Pty Ltd [2011] QCAT 706

REPRESENTATION:

Applicant: Self-represented
 Respondents: 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] Nigel Bruce did not attend the hearing to respond to John Ridgway’s Application for minor civil dispute – minor debt on 13 June 2019. In Mr Bruce’s absence, the learned Adjudicator ordered him to pay Mr Ridgway the sum of \$11,857.96 by 23 June 2019.
- [2] Mr Bruce has appealed that decision. However, he does not raise any error by the learned Adjudicator. Rather, he is effectively seeking a reopening on the grounds that he had a reasonable excuse for not attending: that he needed to support a family friend whose son was undergoing a medical procedure and that he was unsure whether Mr Ridgway would attend. Mr Ridgway did attend the hearing, although he did not attend an earlier mediation.
- [3] In his Application for leave to appeal, Mr Bruce claimed that “documentation can be provided upon request”, however none has been filed to support his claimed reasons for not attending.
- [4] The matter will need to be referred back to the Tribunal to decide whether the proceeding should be reopened.¹ The Appeal Tribunal notes that Mr Bruce will need to establish to the Tribunal a ‘reopening ground’ – a reasonable excuse for not

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 143A.

attending the hearing or that significant new evidence has arisen since the proceeding was first heard and decided.²

- [5] In deciding whether to reopen the application, the Tribunal will consider delay, wasted costs, the legitimate concerns of proper case management and the proper use of public resources.³
- [6] The Tribunal sent Mr Bruce a Notice of Hearing on 21 March 2019, stating the hearing time of 2.00pm on 13 June 2019 and including the following:
- If you do not attend the hearing, the Tribunal may hear and decide the matter in your absence, including making orders against you.
- [7] Mr Bruce did not dispute receiving the Notice of Hearing. The words in the Hearing Notice are clear and not difficult to understand. Because of the considerable demands on the Tribunal's resources resulting in multiple listings before Adjudicators, applicants who do not attend their hearing at the listed time and date can have matters heard in their absence.
- [8] It would not normally be considered reasonable for a party to not to attend because they believe another party is not attending. The onus is always upon Mr Bruce to attend the hearing and present his case.⁴ The requirement for his attendance does not depend on his belief about the attendance of the other party.
- [9] Regardless of the reason, if Mr Bruce had doubts about whether he could attend, it was incumbent upon him to apply for an adjournment or apply to appear by telephone. This is because Mr Bruce has an obligation to act in his own best interests:

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.⁵

- [10] The Tribunal is mandated to conduct proceedings in an informal way that minimises costs to parties and is as quick as is consistent with achieving justice⁶ – particularly in the busy and demanding minor civil disputes jurisdiction, where thousands of applications are processed and determined each year.⁷

² Ibid, s 138(1), Schedule 3 (definition of 'reopening ground').

³ *Ren v Poolworld Pty Ltd* [2011] QCAT 706, [8], citing with approval *Aon Risk Services Aust Ltd v Australian National University* (2009) 239 CLR 175.

⁴ *Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe* [2013] QCATA 212, [47] (Wilson J); *Harris v Foxworth Pty Ltd* [2013] QCATA 133, [18]; *Breezeway Developments Pty Ltd v ADG Hydraulics Pty Ltd* [2010] QCATA 69, [18].

⁵ *Creek v Raine & Horne Mossman* [2011] QCATA 226, [13], citing with approval *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175, 217.

⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 4(c).

⁷ *Rayner & Anor v Trabme Pty Ltd t/as Elders Redcliffe* [2013] QCATA 212, [46] (Wilson J).

[11] It is within this context that the matter is referred to the Tribunal to decide. In accordance with the Tribunal's mandate to provide natural justice,⁸ Mr Bruce will be given an opportunity to file evidence to support his claimed reasons for not attending the original hearing.

[12] The appropriate orders are:

1. Nigel Bruce is taken to have made an application for the proceeding to be reopened under section 138 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).
2. Nigel Bruce is taken not to have made an application or appeal under section 143 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).
3. Nigel Bruce must file with the Tribunal two (2) copies and give to John Ridgway one (1) copy of his evidence and submissions in support of his application for the proceeding to be reopened by 4.00pm on 16 June 2020.
4. John Ridgway must file with the Tribunal two (2) copies and give to Nigel Bruce one (1) copy of his evidence and submissions in reply by 4.00pm on 30 June 2020.
5. The matter is referred to the Tribunal to decide whether the proceeding should be reopened not before 1 July 2020.

⁸ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 28(3)(a).