

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Coates Glass and Glazing & Anor v Frost* [2020] QCATA 98

PARTIES: **COATES GLASS AND GLAZING**
(first applicant/appellant)
RYAN COATES
(second applicant/appellant)
v
ALAN FROST
(respondent)

APPLICATION NO/S: APL161-19

ORIGINATING APPLICATION NO/S: MCDO219-19 Southport

MATTER TYPE: Appeals

DELIVERED ON: 1 July 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS: **Application for Leave to Appeal refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – where the appellant performed glazing services for the respondent – where the respondent claimed the work was defective – where Justices of the Peace found the work was defective - where the appellant failed to return to rectify the work despite requests to do so by the respondent – where the respondent engaged another glazier to rectify the work – where the cost of rectification was more than the original work
Competition and Consumer Act 2010 (Cth), Schedule 2 s 60, s 267(2)
Pickering v McArthur [2005] QCA 294

REPRESENTATION:

Applicant: Self-represented by R Coates

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] The respondent ('Frost') engaged Mr Coates who traded as Coates Glass and Glazing (collectively 'Coates') to cover up some glass windows in a unit he owned by fixing mirror to the existing glass with silicon. He also had Coates fix mirror along an existing splashback area in the kitchen.
- [2] Frost was unhappy with the work and made attempts to contact Coates to return to rectify the job, however Coates failed to respond to requests and did not return to the unit.
- [3] Frost had the mirrors replaced by another firm of glaziers and sued in the Tribunal for the rectification costs. In response Coates maintained cleaners engaged by Frost after the mirrors were freshly set in place had cleaned too early and caused any problems that existed.
- [4] The matter was heard by Justices of the Peace on 21 May 2019 who found in favour of Frost and ordered Coates to pay \$2,570.50 to Frost, the amount charged Frost by new contractors replacing the mirrors plus the filing fee in the Tribunal.
- [5] Coates seeks leave to appeal that decision. 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
- [6] Many self-represented parties misunderstand the appeal process and its function, and mistakenly believe an appeal is simply a second opportunity to present a better case. Leave to appeal will usually only be granted where an appeal is necessary to correct a substantial injustice to the appellant and where there is a reasonable argument that there is an error to be corrected.²
- [7] In attempting to run their case again, rather than identify error in the proceedings below, they ask that evidence they did not submit in the first hearing be considered in the appeal as fresh evidence.
- [8] That is the case here, with Coates asking the Appeal Tribunal to permit Coates to present fresh evidence. In the application for leave to appeal when asked to set out the grounds of appeal the respondent somewhat confusingly states:
- Appeal the decision based on the fact I have now have (sic) additional evidence including phone recordings that completely refutes the evidence given by the respondent. Advise that you have sourced additional photos, have an eyewitness who can attend and you now have Australian standards information with the recommended gaps around the product to prove that it was in fact fitted correctly.
- [9] In directions given by the Appeal Tribunal on 5 July 2019 the parties were informed that if they sought to rely on fresh evidence they were required to make an application for that and include submissions saying:
- (a) Why the fresh evidence was not available to the Tribunal below;

¹ *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, s 142(3)(a)(i) ('QCAT Act').

² *Pickering v McArthur* [2005] QCA 294.

- (b) Why the fresh evidence is important; and
 - (c) Why the fresh evidence should be accepted.
- [10] Coates did not make that application. Instead Coates simply filed extra material on various dates without any of the required submissions to justify receipt of fresh evidence.
- [11] It is unclear what benefit Coates seeks to obtain from most of the material filed in any case. The material includes photographs of the mirrors fitted by Coates (presumably), but there were similar photographs presented to the Justices of the Peace below.
- [12] Mr Coates gave evidence at the hearing below about a telephone conversation he had with Mrs Frost about cleaners attending and he repeats that conversation in the so-called new material but this time sets it out in the form of a statutory declaration made by him.
- [13] Coates includes a copy of his written quote for the work done but that was also tendered at the hearing. The copy he now wants to rely on is only different in that it also bears the signature of Frost.
- [14] There are other documents but their relevance is questionable. None of the material is novel, importantly there is no explanation why it couldn't have been made available for the hearing below and there is no reasonable prospect that if had it been available below it would have changed the decision of the Justices of the Peace.
- [15] Leave to adduce fresh evidence is therefore refused.
- [16] The Justices of the Peace accepted the evidence of Frost where it conflicted with Coates. They accepted that no cleaners came into the premises until after the mirrors were replaced by Cutting Edge Glass and Mirrors ('Edge'). That was a reasonable conclusion open to them on the evidence given at the hearing by the parties.
- [17] In the submissions made by Coates filed 16 September 2019 an issue about the amount of the award made in favour of Frost is raised and challenged on the basis that Frost was only objecting to two out of six mirrors installed by Coates and yet the costs of replacement allowed Frost was approximately \$1,000 more than Coates had charged for six mirrors. Coates submits that first it is unfair that Frost was awarded an amount more than the cost of the original work, and second that the Tribunal had no jurisdiction to make an award in excess of the original cost of the work.
- [18] Frost's initial claim was for the cost to Frost of having the mirrors installed by Coates "completely replaced and made good." The Justices of the Peace accepted Frost's evidence that Edge used the same quality mirror as used by Coates. They found support for his evidence in the invoice from Edge which described the work done by them as "Supply and replace mirrors installed by Coates Glass & Glazing in the foyer and over the kitchen windows."
- [19] The Justices of the Peace referred to the guarantee provided by the *Competition and Consumer Act 2010* (Cth) Schedule 2 ('ACL') that the work done by Coates was required to be done to a satisfactory standard. The ACL provides by s 60 that where a person supplies services to a consumer in trade or commerce there is a guarantee that the services will be rendered with due care and skill. By s 267(2) of the ACL if

the failure to comply with a guarantee under the ACL can be remedied and is not a major failure then the consumer may require the supplier of services to remedy the failure within a reasonable time.

- [20] Coates was clearly a supplier of services in trade and commerce to Frost as a consumer. The Justices of the Peace concluded the work done by Coates failed the standard required. The failure was probably not a major failure but a minor failure in that the services were not substantially unfit for their purpose of hiding existing windows and acting as mirrored surfaces.
- [21] Frost gave evidence that he tried to have Coates return to fix the work but his requests were ignored. If the supplier of services refuses or fails to remedy the failure within a reasonable time the consumer may:
- (i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied.³
- [22] The Justices of the Peace accepted the costs charged Frost by Edge were the costs of doing the Coates work over again. That rectification work therefore clearly required more work than had been done by Coates. The Justices of the Peace referred to the Edge invoice which referred to supplying new mirrors and also replacing the mirrors installed by Coates. That the rectification cost exceeded the cost of the initial work is therefore unsurprising.
- [23] The Justices of the Peace considered the rectification costs incurred by Frost reasonable. The Justices of the Peace were entitled to award an amount in favour of Frost which was greater than the costs of the original work done by Coates if the greater amount was the reasonable costs incurred by Frost as a consumer having the defective work remedied.
- [24] There is no reasonable argument that the Justices of the Peace made an error in their decision.
- [25] Leave to appeal is refused.

³ s 267(2)(b)(i) ACL