

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Cesa Institute Pty Ltd v Forbes Dowling Lawyers Pty Ltd*  
[2021] QCATA 17

PARTIES: **CESA INSTITUTE PTY LTD**  
(appellant)

v

**FORBES DOWLING LAWYERS PTY LTD**  
(respondent)

APPLICATION NO/S: APL223-19

ORIGINATING APPLICATION NO/S: MCDO 61106/18 (Brisbane)

MATTER TYPE: Appeals

DELIVERED ON: 28 January 2021

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Gordon

ORDERS:

- 1. The names of the parties to this appeal are changed in the Appeal Tribunal's records as follows:**
  - (a) appellant changed from 'Legal Referral Group Pty Ltd' to 'Cesa Institute Pty Ltd'; and**
  - (b) respondent changed from 'Forbes Dowling Lawyers' to 'Forbes Dowling Lawyers Pty Ltd'.**
- 2. Leave to appeal is refused. This means that the appeal fails.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN NO APPEAL LIES – leave to appeal – where appellant sought leave to appeal against a Member's decision in a minor civil dispute – where the Member decided that the claim was outside the jurisdiction of the tribunal and in any case would be statute barred – whether any reasonably arguable grounds of appeal

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 11, Schedule 3  
*Limitation of Actions Act 1974* (Qld), s 10

APPEARANCES &  
REPRESENTATION:

Appellant: Self-represented (through a director Roy Thompson)

Respondent: Did not participate in this appeal

This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

**REASONS FOR DECISION**

- [1] The appellant brought a minor debt claim against the respondent. It was heard by a member of the tribunal who dismissed it on the grounds that the tribunal did not have jurisdiction to hear it, and in any case because it was statute barred - the claim having been brought more than six years after the cause of action arose.
- [2] When it was registered, the appellant was called Legal Referral Group Pty Ltd. Subsequently it changed its name to Cesa Institute Pty Ltd and this is the name that the company should have used throughout the proceedings. The claim was brought against Forbes Dowling Lawyers ACN 114660052. The correct name for this respondent is Forbes Dowling Lawyers Pty Ltd.
- [3] In this appeal the appellant says that the claim was for ‘various breaches of fiduciary duty’ and the Member failed to recognise that there was no limitation period for such a claim.<sup>1</sup> It is said that the Member’s insistence that there should be a contract or some other thing to found the claim was a ‘distraction’.<sup>2</sup> The appeal documents also allege fraud and various breaches of the *Corporations Act 2001* (Cth).
- [4] The appellant has given a lot of documents to the Appeal Tribunal in addition to the submissions about the appeal. There are 11 exhibits attached to the grounds of appeal and on 23 July 2020 the appellant emailed a large number of additional documents. Some of this material was before the Member but some was not. There has been no application to the Appeal Tribunal for anything to be accepted as ‘fresh evidence’. On 24 August 2020 the Appeal Tribunal gave directions requiring such an application if a party wished the Appeal Tribunal to consider evidence not before the tribunal below. In particular, submissions were required about why the fresh evidence was not available to the tribunal below, why it is important and why it should be accepted. Because the directions have not been complied with, I am unable to accept the documents as fresh evidence.
- [5] Since the jurisdiction of the tribunal to hear the matter was in issue, on 24 August 2020 the Appeal Tribunal directed the appellant to identify the errors made by the Member at the hearing and also make submissions on the questions of jurisdiction and statutory limitation. The appellant did not file any submissions about these matters.
- [6] The description of the claim in the appeal documents as one for breach of fiduciary duty contrasts to its description in the original claim. There it was described as for ‘loss sustained through misleading and deceptive conduct’. Inevitably, the response

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<sup>1</sup> Page 5 of ‘Grounds for appeal for the matter’, 3<sup>rd</sup> paragraph from bottom.

<sup>2</sup> Page 6 of ‘Grounds for appeal for the matter’.

to the claim filed by the respondent pointed out that the tribunal had no jurisdiction over such a claim.

- [7] The claim was heard on 29 May 2019. The Appeal Tribunal has obtained a transcript of that hearing and from the transcript it is possible to see what happened. Roy Thompson attended on behalf of the appellant, and William Duncan and Darren Cobb attended on behalf of the respondent. At the hearing the Member rightly concentrated on whether the tribunal had jurisdiction to hear the claim and if so, whether it was statute barred.
- [8] Apart from its specialist jurisdiction, there are two limbs to the tribunal's jurisdiction in minor civil disputes. The tribunal has jurisdiction to hear and decide a claim (a) to recover a debt or liquidated demand of money or (b) arising out of a contract between a consumer and trader, or a contract between two or more traders.<sup>3</sup>
- [9] In this matter it was clear to the Member that the tribunal had no jurisdiction to deal with the claim under limb (b). This was because, as explained by Mr Thompson, the appellant could not establish that there was a contract between the parties.<sup>4</sup> Although Mr Duncan on behalf of the respondent referred to an agreement which had been 'struck', he said this was between Mr Thompson and another person who later became a director of the appellant company.<sup>5</sup> This was not a reference therefore, to a legally binding contract between the appellant and the respondent.
- [10] As for jurisdiction under limb (a), the claim was clearly not one for recovery of a debt. It was a damages claim, both as described in the application itself and in reality. And it is still a damages claim if it is considered to be properly described in the appeal submissions as a claim for breach of fiduciary duty.
- [11] Although it would be open to the tribunal to hear and determine a damages claim under limb (a) this could only be where the claim is a liquidated demand of money. The Member investigated with Mr Thompson whether the claim could be a liquidated demand of money. But the combined absence of any contract, any invoices, any demand, or any agreement about what might be owing, was obviously fatal to the claim as the Member explained in the reasons.<sup>6</sup>
- [12] The second reason given by the Member to dismiss the claim, that it was statute barred at least under any jurisdiction under which the tribunal could hear it, was also correct. This was because if there was a cause of action within the tribunal's jurisdiction, it arose at the latest in August 2009, yet the application was filed 31 July 2018, some nine years later. And as the Member found, there was nothing which had happened between those dates which had caused the right to bring the claim to accrue on a later date.<sup>7</sup>
- [13] Leave is required to bring an appeal of this type. Leave should be refused because there is no arguable case on appeal. This means that the appeal fails.

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<sup>3</sup> Section 11 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and the definition of 'minor civil dispute' in Schedule 3 to the Act.

<sup>4</sup> Transcript 1-7 line 16, 1-8 line 44, and 1-9 line 28.

<sup>5</sup> Transcript 1-25 line 25.

<sup>6</sup> Transcript 1-30 line 5.

<sup>7</sup> Transcript 1-30 line 12. Section 10 of the *Limitation of Actions Act 1974* (Qld).