

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Atlas Property Solutions Pty Ltd v JHS Qld Group Pty Ltd*
[2023] QCATA 21

PARTIES: **ATLAS PROPERTY SOLUTIONS PTY LTD**
(appellant)

v

JHS QLD GROUP PTY LTD
(respondent)

APPLICATION NO/S: APL026-22

ORIGINATING APPLICATION NO/S: MCDO60387/21

MATTER TYPE: Appeals

DELIVERED ON: 13 March 2023

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member JR McNamara

ORDERS: **1. Application for leave to appeal, and appeal is dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – ADMISSION OF FURTHER EVIDENCE – where appellant ordered to pay outstanding amount under partially paid invoice for carpet cleaning service – where appellant ordered to pay outstanding amount under unpaid invoice for cleaning services – where appellant claimed property was not cleaned to a satisfactory standard and so invoice should not be paid – where appellant seeks the decision of the Adjudicator be overturned – where appellant claims it was provided insufficient or incorrect information about the claim prior to the hearing – where appellant claims to have produced evidence to demonstrate that the respondent provided false information to the Adjudicator – where limited evidence provided to support application for leave to appeal and appeal – where new evidence could have been obtained with reasonable diligence for use at the hearing – where new evidence does not indicate false statements in the respondent’s documents and position at the hearing – where the basis of the claim was sufficiently clear by the time of the hearing – where new evidence provided would not impact the result of the matter before the adjudicator – where matter not referred to tribunal for decision to reopen under s 143A – where leave

to appeal and appeal dismissed

Queensland Civil and Administrative Tribunal Act 2009
(Qld) s 137, s 138, s 142, s 143A

Clarke v Japan Machines (Australia) Pty Ltd [1984] Qd R
404, considered

APPEARANCES & REPRESENTATION: 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

Background

- [1] The appellant, Atlas Property Solutions Pty Ltd trades as the property management company 'Remax Solutions' at Strathpine (**Remax**). The respondent, JHS Qld Group Pty Ltd is a cleaning services business which appears to trade under the business name 'Aust Clean' at North Lakes (**JHS**).
- [2] Remax created two Work Orders whereby they engaged JHS for cleaning services at 31 Rosemary Street, Caboolture South (**Rosemary Street**) and at 35 Stanley Street, Strathpine (**Stanley Street**).
- [3] The Work Order for Rosemary Street dated 18 January 2021 (Job Number 11529) described the task: 'Please do a full bond clean at this property and pest control for cockroaches and fleas'. The Work Order also says: 'I will attach the exit report.'; 'Work order issued on behalf of the owner – Leonie Yelland'; and 'Invoice Tenants c/o Remax Solutions'.
- [4] The Work Order for Stanley Street dated 31 January 2021 (Job Number 11565) described the task: 'Please complete a lite clean of the property as per exit condition report. Only items noted in the report are required. Please also mow yards, weed garden under stairs and weed pathways as noted in the report too.' The Work Order said: 'Work order issued on behalf of the owner – Eric Whitby' and 'Invoice Tenant c/o Remax Solutions'.
- [5] A 19 January 2021 invoice (No. 10-21) issued by JHS to Remax for services at Rosemary Street sought payment of \$990.00 for Bond cleaning and pest spray. Remax apparently paid \$996.70 in response to this invoice. Dissatisfied with the quality of the clean, Remax asked JHS to return to clean the carpets. A new invoice dated 29 January 2021 (No. 31-21) was issued by JHS to Remax which recorded the same amounts for bond cleaning and pest spray (\$990.00), but added amounts for 'Carpet steam clean' and 'Yard maintenance'. After applying a 10% discount, the total amount now sought for the services at Rosemary Street was \$1108.80. The difference between the amount sought and the amount paid in respect of Rosemary Street is \$112.10.
- [6] A 31 January 2021 invoice (No. 35-21) issued by JHS to Remax for services at Stanley Street sought payment of \$242.00 for 'cleaning services as per exit condition report' and yard maintenance. Again, the quality of the work completed by JHS was questioned. Remax requested that JHS return to the property to clean to the standard required in the Work Order. JHS says they returned on 4 February 2021 to

clean as requested by Remax. Remax says that the invoice should not be paid as the initial work was of a poor standard and that JHS did not attend a second time as requested – an assertion denied by JHS.

The decision

- [7] The matter was heard on 12 January 2022.
- [8] Remax submitted that they were not responsible for the payment/s as the Work Orders were issued by Remax on behalf of the owner/s, and that invoices were to be addressed to the tenant/s (care of Remax).
- [9] While the Work Order for Rosemary Street identified the name of the tenant and provided their email address for the purpose of access, neither Work Order described the authority Remax held to commission work and incur charges on the tenants' behalf. The Adjudicator concluded that Remax were agents of the landlord, and as such were not entitled to require that a tenant be invoiced. I agree.
- [10] The issue in dispute concerning Rosemary Street was whether a 'full bond clean' included a carpet clean. At the hearing, Remax said, "normally that's included in the bond clean". JHS said, "We don't do the carpet unless you ask to do the carpets all together". The Adjudicator observed that carpet cleaning did not appear on the Work Order and that the exit report was not in evidence.
- [11] The Work Order for Stanley Street was more specific about the work to be done. The Adjudicator found that the photographic evidence presented by Remax to demonstrate the poor standard of the clean pre-dated the second time JHS claims they attended the property to clean. The Adjudicator accepted that even though the standard of work in some areas might not have been adequate, there was evidence that JHS had cleaned the property as instructed by the Work Order.
- [12] The Adjudicator ordered Remax to pay JHS \$479.50 within 28 days, being the total of the unpaid amount under Invoice No. 31-21 of \$112.10 for Rosemary Street, the unpaid \$242.00 under Invoice No. 35-21 for Stanley Street, and the QCAT filing fee of \$125.40.

The Appeal

- [13] An appeal against a decision of the tribunal in a proceeding for a minor civil dispute may be made only if the party has obtained the appeal tribunal's leave to appeal.¹
- [14] Where the appeal tribunal considers the reasons for the appeal may constitute a reopening ground, the appeal tribunal may refer the matter to the tribunal to decide whether the proceeding should be reopened.²
- [15] The grounds stated in the application for leave to appeal or appeal are that:
- (a) Remax was provided with insufficient or incorrect information concerning the claim prior to the hearing;
 - (b) Remax can produce evidence to demonstrate that the representative of JHS gave false and misleading information at the hearing; and

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

² *QCAT Act* s 143A.

(c) As a result, an incorrect decision was made.

- [16] Remax also maintains the argument raised in the hearing that they are not liable for the invoices however, as noted above I agree with the conclusion of the Adjudicator that Remax were agents of the landlord and were not entitled to require that a tenant be invoiced. My consideration of the material and conclusions regarding the first ground of appeal also deals with and answers the remaining ground.

Was Remax provided with insufficient or incorrect information prior to the hearing?

- [17] The ground goes to whether the application and supporting material enabled Remax to understand the case that was brought against them to be able to prepare and present evidence and argument in response.
- [18] The application for a minor civil dispute was filed 16 June 2021. The amount claimed was \$1014.10, together with the filing fee of \$125.40. The reason JHS sought this payment was stated as follows:

The property manager had asked us to do cleaning and yard maintenance works and the invoices were sent on completion of works. We have requested multiple times for the payment of the invoices, but the property manager denied to pay and she clearly showed that she is not going to pay the invoices. The property manager is aware of the unpaid invoices, but insists not to pay them. There was no other way to enforce her to pay debt. One of the invoices was only paid in part and the other two invoices were not paid at all.

- [19] There were two invoices attached to the application, Invoice 35-21 in the amount of \$242.00 for cleaning services and yard maintenance at Stanley Street, and Invoice 31-21 in the amount of \$1108.80 (after a 10% discount was applied to \$1232.00) for work completed at Rosemary Street.
- [20] It is not clear how the amount of \$1014.10 claimed in the application was calculated but at the hearing, the parties explained that it included the amount due on an invoice for another job (at Kippah Street, Deception Bay) which was paid by Remax to JHS after the application was filed.
- [21] The response filed by Remax on 30 June 2021 says, amongst other things, 'no invoices were received with this application so we are not sure as to which invoices the applicant is referring to'.
- [22] Email correspondence from Remax to JHS dated 5 July 2021 says: 'You have not sent a copy of the invoices with the court papers you are talking about, so we are not sure which invoices you refer to? Please forward the invoices through with the amended amounts if there has been an amount paid'.
- [23] It is apparent from this email that Remax was aware that the claim to some extent related to the Stanley Street property; and that the total amount claimed may require amendment if it had included amounts already paid in respect of Rosemary Street.
- [24] There appears to have been no response from JHS to the 5 July 2021 email. Remax re-sent the email on 31 August 2021. Again, it appears that there was no reply from JHS.
- [25] The tribunal emailed the parties on 7 January 2022 inviting them to provide any 'further materials they wish to add to the file'.

- [26] In an email dated 10 January 2022, Remax sent the tribunal 12 ‘supporting pictures’ and further supporting documents including statements with concerns relating to the work quality and payments made in relation to Stanley Street and to the issues concerning work done at Rosemary Street.
- [27] While the lack of a response/s from JHS was unhelpful, it is apparent from the content of the statements attached to their 10 January 2022 email that by that date Remax had a clearer understanding of the claim against it and the work orders involved in the claim.
- [28] On 12 January 2022 the hearing proceeded by telephone ‘due to the emerging Covid-19 situation’.

Rosemary Street

- [29] The grounds of appeal concerning Rosemary Street are, to a limited extent, expanded upon: in an undated and unsigned written submission; copies of email correspondence between the parties concerning work done on Invoice No.10-21; a copy of Work Order Job Number 11529; and a bundle of 5 images labelled ‘31 Rosemary St Caboolture’ which was received on 18 February 2022.
- [30] In the written submission, Remax says ‘I do not have the invoice for \$1180.00 I was given an invoice for \$990.00’. However, the response documents filed by Remax on 10 January 2022 state that an invoice for \$1108.80 was ‘sent through’ after ‘they had to reattend’. Remax also says that a promised 10% discount was never applied.
- [31] Invoice No. 31-21 was issued by JHS after they returned to the property to attend to the carpet. Invoice 31-21 was intended to replace Invoice 10-21. Invoice 31-21 recorded the same amounts as Invoice 10-21 for bond cleaning and pest spray (\$990.00) but added amounts for ‘Carpet steam clean’ and ‘Yard maintenance’. After applying a 10% discount, the total now sought was \$1108.80.
- [32] The property owner and Remax were clearly dissatisfied with the standard of work done. The email correspondence provided with Remax’s written submissions confirms that fact, but provides no additional relevant information that was not known to the Adjudicator. The Adjudicator found that there was no evidence that Remax specifically requested a carpet clean when the Work Order was placed, and that the extra request for a carpet clean justified an additional payment. Although the Work Order which initiated the job says ‘I will attach the exit report’, unlike the Work Order for Stanley Street, it does not specifically link the work to be done to items in the exit report, and the exit report was not in evidence.
- [33] Of the five images received with Remax’s 18 February 2022 material, three appear to show aluminium window frames and possibly mildew, mildew on a door jamb, and possibly mould on a ceiling cornice. These images relate to the standard of the house clean, not the carpet clean.
- [34] The copy of the Work Order Job Number 11529 provided with submissions is identical to the Work Order Job Number 11529 which was in the material before the Adjudicator except that on this copy, rather than saying ‘Invoice Tenants c/o Remax Solutions’, it says ‘Invoice Owner c/o Remax Solutions’. There is nothing in the material to explain that change or the circumstance in which it was made.

Stanley Street

- [35] The grounds of appeal concerning Stanley Street are also, to a limited extent, expanded upon in an undated and unsigned written submission; email correspondence between the parties between 4 and 15 February 2021; an email of 28 January 2022 attaching 5 images dated 5 February 2021 and 6 images dated 3 February 2021 (6 of these 11 images were not filed prior to the hearing); and a bundle of 10 images labelled '35 Stanley St Strathpine' received on 18 February 2022.
- [36] Invoice No. 35-21 for \$242.00 was not paid. The relevant Work Order Job Number 11565 issued by Remax required a 'Lite clean and Mow and weed'. The Work Order notes that there was a lockbox to enable entry to the property. The cost breakdown in the invoice was \$80.00 for cleaning services, \$140.00 for yard maintenance, and \$22.00 GST.
- [37] There appears to have been no challenge to the yard maintenance claim in the invoice, except some dissatisfaction that garden waste was placed in the recycling bin and as a result the bin was not emptied. Remax was dissatisfied with the standard of the cleaning service and asked JHS to return to complete the work. JHS says they did, but Remax does not accept that JHS did return to complete the cleaning work. The Adjudicator found that there was no evidence that JHS had not returned to the property. Remax says that JHS produced no evidence to show they had been back to the property.
- [38] JHS's Invoice No. 35-21 was generated on 31 January 2021. There are six photographs provided with Remax's appeal submissions which were apparently taken on 3 February 2021 showing places which they considered required further cleaning. JHS claimed to have returned to the property on 4 February 2021 to do further cleaning. Remax attended the property on 5 February 2021 and did further cleaning. Remax says in its submission that the further cleaning was required 'as it was in the same state as the pictures taken on the 3rd of February 2021'. This was the position presented by Remax at the hearing and there is no additional evidence provided which would confirm the assertion made.
- [39] In my view, by the time the hearing was conducted Remax was in a position to understand the case that was brought against them and were able to prepare and present evidence and arguments in response.
- [40] The ground that false and misleading information was given at the hearing appears to concern: 1. whether JHS was truthful in their material, and before the Adjudicator, in the position concerning work at Rosemary Street, and 2. Whether JHS was truthful in the assertion that work was completed at Stanley Street. This is a question of credit which the Adjudicator was best placed to consider. There is nothing in the material accompanying the application for leave to appeal or appeal that causes me to consider the question of credit, as it relates to the facts, would require a different decision to be made.

Decision

- [41] It is clear that there was a business relationship between Remax and JHS where Remax would create a Work Order, assign it a Job Number, and provide information regarding the work to be done. Once the work was completed, JHS would generate

an invoice for payment. There is no other information regarding the terms and conditions of engagement or a process for dispute resolution.

- [42] I accept that the information concerning the dispute found in the 16 June 2021 application was quite brief, but it was clear it concerned amounts due on invoices issued by JHS to Remax. By the time of the hearing, despite JHS being largely uncommunicative, the basis of the claim was sufficiently clear to enable the matter to proceed.
- [43] There is little in the way of fresh evidence presented by Remax. What little additional evidence there is, could have been obtained with reasonable diligence for use at the hearing. For the reasons expressed above, in my view, the evidence, if accepted, would not have an important impact on the result of the case. I do not, therefore, refer the matter to the tribunal to decide whether the proceeding should be reopened. Nor should the appeal succeed.
- [44] An application for leave to appeal is not and should not be an attempt to shore up the deficiencies of a party's case at the initial hearing. In my view, for the reason given, the material provided in support of the application attempts to do no more than that. There is nothing in the submissions or the further evidence provided which would have had an impact on the result of the matter before the Adjudicator.

Orders

1. Application for leave to appeal, and appeal is dismissed.