

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Edgar v Greensill Farming Pty Ltd & Logan* [2021] QIRC 085

PARTIES: **Edgar, Mitchell**  
(Applicant)

v

**Greensill Farming Pty Ltd**  
(First Respondent)

&

**Logan, Alexandra**  
(Second Respondent)

CASE NO: AD/2020/37

PROCEEDING: Application to dismiss

DELIVERED ON: 18 March 2021

MEMBER: Hartigan IC

HEARD AT: On the papers

ORDERS:

- 1. The application is granted.**
- 2. Pursuant to rule 45(3)(a) of the *Industrial Relations (Tribunals) Rules 2011 (Qld)*, I dismiss the proceedings in AD/2020/37; and**
- 3. I make no order as to costs.**

CATCHWORDS: INDUSTRIAL LAW – ANTI-DISCRIMINATION – APPLICATION TO DISMISS – failure to comply with directions – where complainant given ample opportunity to advance his complaint – application to dismiss granted – substantive matter dismissed

LEGISLATION: *Anti-Discrimination Act 1991* (Qld), s164A

*Industrial Relations Act 2016* (Qld), s 530

*Industrial Relations (Tribunals) Rules 2011* (Qld), r 45

CASES: *House v King* (1936) 55 CLR 499

*Paul Scott v State of Queensland & Ors* [2019] QIRC 115

## Reasons for Decision

- [1] Mr Mitchell Edgar lodged a complaint with the Queensland Human Rights Commission ("QHRC") on 6 January 2020 alleging discrimination on the basis of impairment in contravention of the *Anti-Discrimination Act 1991* (Qld) ("the AD Act").
- [2] The matter was referred by the QHRC to the Queensland Industrial Relations Commission in accordance with s 164A of the AD Act.
- [3] The respondents, Greensill Farming Pty Ltd and Ms Alexandra Logan, apply for orders that Mr Edgar's application be dismissed pursuant to r 45 of the *Industrial Relations (Tribunals) Rules 2011* (Qld) ("the Rules").

### **The history of the matter before the Queensland Industrial Relations Commission**

- [4] On 27 April 2020, Mr Edgar and the respondents received a Directions Order issued by the Industrial Registrar. Direction one of that order required any party seeking leave to be legally represented to file and serve an application for leave by 11 May 2020.
- [5] On 11 May 2020, an application was received on behalf of the respondents, that leave be granted for them to be legally represented by MRH Lawyers.
- [6] An affidavit in support of the application was also filed on 11 May 2020 by Mr Michael Waters. Mr Waters attached to his affidavit correspondence between his firm and Ms Renee Curtis, Workplace and Human Rights Advocate, Workers First Pty Ltd, whom he communicated with on the understanding that Ms Curtis and Workers First Pty Ltd represented Mr Edgar.
- [7] Exhibit A to Mr Waters' affidavit is correspondence of Friday 8 May 2020 sent by Ms Curtis to Mr Waters in the following terms:
  - ...
  - We are Mr Edgar's representatives but in the capacity as paid agents/advocates not legal representatives so we will not be filing a form 4 on **Monday, 11 May 2020**. However, we will be filing a Form 33 – Appointment of Agent.
  - However, we consent to your client being represented by your firm and counsel.
  - ...
- [8] No Form 33 – Notice of appointment of agent was subsequently filed by Workers First Pty Ltd on behalf of Mr Edgar.
- [9] On 12 May 2020, a Further Directions Order was issued by the Commission. Direction one granted leave for the respondents to be legally represented pursuant to s 530(1)(c) of the *Industrial Relations Act 2016* (Qld).
- [10] Direction two of the Further Directions Order required that Mr Edgar file in the Industrial Registry and serve on the respondents a statement of facts and contentions by 4.00 pm on 2 June 2020.

- [11] Mr Edgar did not file a statement of facts and contentions in compliance with the Further Directions Order issued on 12 May 2020 on 2 June 2020 nor at any time following that date.
- [12] On 1 June 2020, Workers First Pty Ltd filed a Notice of Withdrawal of appointment of lawyer or agent.<sup>1</sup>
- [13] On 8 June 2020, the respondents filed the current application seeking that the "original application" be dismissed against Greensill Farming Pty Ltd ABN 89 154 796 095 and Ms Alexandra Logan "on the basis that [Mr Edgar] has not complied with paragraph 2 of directions given by Commissioner Hartigan on 12 May 2020."
- [14] Attached to the application was a further affidavit from Mr Waters filed on 8 June 2020. Mr Waters deposes to having received no documentation from Mr Edgar with respect to any attempts to comply with the Further Directions Order.
- [15] Mr Waters deposes to sending an email to Mr Edgar on 5 June 2020 at 11.55 am, giving notice that unless the statement of facts and contentions was received by 4.00 pm on 5 June 2020, that the respondents would make an application to dismiss the matter. Mr Waters deposes to receiving no response to his email from Mr Edgar.
- [16] I listed the matter for mention on 18 June 2020. A notice of listing was issued to both Mr Edgar and the respondents in the matter.
- [17] Mr Edgar did not attend the telephone mention on 18 June 2020.
- [18] At the mention on 18 June 2020, Mr Waters, on behalf of the respondents, sought orders from the Commission in the absence of Mr Edgar, that the proceedings be dismissed.
- [19] I did not hear the application to dismiss in the absence of Mr Edgar on that occasion. Instead, I issued further directions for the parties to file and serve submissions in relation to the respondents' application to dismiss.
- [20] Following the mention, a Directions Order was issued on 18 June 2020, requiring the respondents to file and serve written submissions with respect to the application seeking to dismiss the matter by 4.00 pm on 14 July 2020.
- [21] The second direction of the Directions Order of 18 June 2020 required Mr Edgar to file and serve written submissions in reply with respect to the application to dismiss by 4.00 pm on 28 July 2020.
- [22] The respondents filed their submissions on 14 July 2020.
- [23] The Commission did not receive any submissions from Mr Edgar by 4.00 pm on 28 July 2020, or at all.

### **Relevant legislative provisions**

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<sup>1</sup> This occurred despite the fact that no Form 33 had been filed by Workers First Pty Ltd.

[24] Rule 45 of the Rules concerns, amongst other things, directions orders and a failure to comply with directions orders as follows:

**45 Failure to attend or to comply with directions order**

- (1) This rule applies if—
  - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar stating a time, date and place for a hearing or conference for the proceeding; and
  - (b) the party fails to attend the hearing or conference.
- (2) This rule also applies if—
  - (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar; and
  - (b) the party fails to comply with the order.
- (3) The court, commission or registrar may—
  - (a) dismiss the proceeding; or
  - (b) make a further directions order; or
  - (c) make another order dealing with the proceeding that the court, commission or registrar considers appropriate, including, for example, a final order; or
  - (d) make orders under *paragraphs (b) and (c)*.

[25] As noted in the history of the matter in the Commission as detailed above, Mr Edgar has engaged in a pattern of non-compliance since the proceedings were commenced in the Queensland Industrial Relations Commission. I have concluded that the history of these proceedings demonstrates that Mr Edgar has not been actively engaged or involved in progressing this matter. I consider that the failure to comply with the directions orders of 12 May 2020 and 18 June 2020 and notices of listing, creates no utility for the Commission to facilitate further proceedings in Mr Edgar's matter.<sup>2</sup>

[26] The discretion conferred under r 45 of the Rules must be exercised judicially.<sup>3</sup> The discretion to dismiss a proceeding has, in my view, been enlivened in this matter by Mr Edgar's failure to comply with directions of the Commission.

[27] Given Mr Edgar's failure to comply with directions orders and notices of listings, I consider that there are grounds to exercise the discretion to dismiss the proceeding. Accordingly, pursuant to r 45(3)(a) of the Rules, I dismiss the proceeding in matter AD/2020/37.

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<sup>2</sup> *Paul Scott v State of Queensland & Ors* [2019] QIRC 115.

<sup>3</sup> *House v King* (1936) 55 CLR 499, 504-505.

**Orders**

[28] I make the following orders:

- 1. The application is granted.**
- 2. Pursuant to rule 45(3)(a) of the *Industrial Relations (Tribunals) Rules 2011 (Qld)*, I dismiss the proceedings in AD/2020/37; and**
- 3. I make no order as to costs.**