

# SUPREME COURT OF QUEENSLAND

CITATION: *Alderton & Anor v Wide Bay Constructions Pty Ltd trading as Dixon Homes Hervey Bay* [2018] QCA 149

PARTIES: **SIMON ALDERTON**  
**(first applicant)**  
**SALLY ALDERTON**  
**(second applicant)**  
v  
**WIDE BAY CONSTRUCTIONS PTY LTD trading as**  
**DIXON HOMES HERVEY BAY**  
**ACN 080 402 302**  
(respondent)

FILE NO/S: Appeal No 3204 of 2018  
QCATA No 131 of 2017

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time

ORIGINATING COURT: Queensland Civil and Administrative Tribunal – [2017] QCATA 147

DELIVERED ON: 29 June 2018

DELIVERED AT: Brisbane

HEARING DATE: 12 June 2018

JUDGES: Sofronoff P and Gotterson JA and Ryan J

ORDERS: **Application refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – WHEN NO APPEAL LIES – where the applicants began proceedings in QCAT seeking rectification of defective works to their home to the value of \$18,500 from the respondent – where the applicants’ claim was dismissed – where the applicants appealed the decision of the Tribunal to the Appeal Tribunal – where the applicants made an application to the Appeal Tribunal to adduce further evidence – where the application to adduce further evidence was refused – where no determination as to whether leave to appeal will be granted has been made by the Appeal Tribunal – where s 150 *Queensland Civil and Administrative Tribunal Act* 2009 provides that an appeal to the Court of Appeal from the QCAT Appeal Tribunal only lies in respect of a decision of the Appeal Tribunal to refuse leave to appeal, a cost-amount decision or the final decision – where the applicants are attempting to appeal an interlocutory order – where there is no right of appeal from an interlocutory order of the Appeal Tribunal except where such

an interlocutory order is appealed as part of a substantive appeal against the final decision of the Appeal Tribunal

*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 150

COUNSEL:           The first applicant appeared on his own behalf  
                           The second applicant appeared on her own behalf  
                           No appearance for the respondent

SOLICITORS:        The first applicant appeared on his own behalf  
                           The second applicant appeared on her own behalf  
                           No appearance for the respondent

- [1] **SOFRONOFF P:** This is an application for extension of time for leave to appeal against a decision of the Queensland Civil and Administrative Tribunal.
- [2] On 10 December 2007 the applicants entered into a contract with the respondent for the building of a home on their property. Construction was completed on 6 November 2008. On 19 November 2014 the applicants complained to the Queensland Building and Construction Commission about six defects. The Commission issued the respondent with a Notice to Rectify or Complete in relation to two of these and advised the applicants that the other four items had been investigated; one had been found to have been rectified and there was insufficient evidence to reveal defective construction in relation to the other three. On 22 April 2015 the Commission advised the applicants that the respondent had attended to the two items which had been the subject of the Notice.
- [3] On 21 May 2015 the applicants began proceedings in QCAT seeking rectification of defective work to the value of \$18,500. They also sought a review of the decision of the Commission of 12 January 2015. Their claim was heard in October 2016 and dismissed on 28 March 2017.
- [4] The applicants then sought leave to appeal that decision. In the course of that proceeding before the Appeal Tribunal, the applicants filed an application seeking leave to rely upon fresh evidence. The Appeal Tribunal refused that application on 24 November 2017. On 7 February 2018 Senior Member Howard gave her reasons for refusing that application.
- [5] The applicants now seek an extension of time within which to seek leave to appeal that refusal.
- [6] The position as it stands is that the applicants have a current appeal (or application for leave to appeal) before QCAT. In the course of that proceeding the Appeal Tribunal made an interlocutory decision refusing leave to the applicants to lead further evidence on appeal. The substantive proceeding before the QCAT Appeal Tribunal remains to be heard.
- [7] Appeals to the Court of Appeal from decisions of the Appeal Tribunal are governed by s 150 of the *Queensland Civil and Administrative Tribunal Act 2009*. There is an appeal as of right against decisions of the Appeal Tribunal to refuse an application for leave to appeal. Appeals may only be made on a question of law and only with the

leave of the Court of Appeal. Appeals are limited to appeals against two kinds of decisions only. These are a “cost-amount decision” and “final decision”. A “cost-amount decision” is defined to mean a decision of the Tribunal about the amount of costs fixed or assessed by it under s 107. A “final decision” is, relevantly, one that “finally decides the matters the subject of the proceeding”. The proceeding in this case is the applicants’ appeal to the QCAT Appeal Tribunal concerning the rejection of their claim for compensation for rectification of defective work.

- [8] The decision of Senior Member Howard refusing leave to the applicants to lead further evidence is not a final decision because it does not finally decide the matters the subject of the proceeding.
- [9] There is no avenue of appeal against an interlocutory decision except as part of any substantive appeal that might be made from the final decision in the QCAT appeal.
- [10] For these reasons the current application has no foundation and must be refused.
- [11] **GOTTERSON JA:** I agree with the order proposed by Sofronoff P and with the reasons given by his Honour.
- [12] **RYAN J:** I agree with the order proposed by Sofronoff P for the reasons given by his Honour.