

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Body Corporate for Stoneleigh Terraces CTS 2170 v Body Corporate for Stoneleigh Court CTS 13021* [2023] QCATA 41

PARTIES: **BODY CORPORATE FOR STONELEIGH TERRACES STS 2170**  
(appellant)

v

**BODY CORPORATE FOR STONELIEGH COURT CTS 14021**  
(respondent)

APPLICATION NO/S: APL090-22

MATTER TYPE: Appeals

DELIVERED ON: 11 April 2023

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Richard Oliver

ORDERS: **1. Leave to appeal is granted.**  
**2. The appeal is dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – MINOR CIVIL DISPUTE – COSTS AGAINST REPRESENTATIVE OF A PARTY – where applicant sought costs from a party’s representative in a minor civil dispute proceeding – where a party to a proceeding in a minor civil dispute cannot recover costs except as provided in the QCAT Rules – whether representative of a party is liable for costs in a minor civil dispute proceeding – whether error of law.

*Queensland Civil and Administrative Tribunal Act* s 100, s 102, s 103

*Queensland Civil and Administrative Tribunal Act Rules*, Rule 83

*Neighbourhood Disputes (Dividing Fences and Trees) Act* 2011

*Cullen v Ogden* [2020] QCATA 33 *Earthworks*

*Mechanical Repairs and Service Pty Ltd v Khan* [2015] QCATA 41

*Terera & Anor v Clifford* [2017] QCA 181

*Wallaby Grip (BAE) Pty Ltd & Anor v WorkCover Qld & Anor*

[2022] QCA 204

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

- [1] The application for leave to appeal or appeal arises out of a decision to dismiss the appellant's application that a representative of the respondent, Mr Kelly, pay the appellant's costs of the proceeding in relation to a dividing fence dispute. That proceeding was conducted in the Tribunal's minor civil disputes jurisdiction of the Tribunal.
- [2] A brief history is set out in the appellant's submissions in support of the appeal filed with the initiating application. The application titled "Application for minor civil dispute – dividing fences" was filed in the Tribunal on 6 July 2021. A substantial quantity of material was filed by both parties which is evident from the minor civil dispute file. It would seem from the respondent's side the charge was being led by Mr Kelly.
- [3] However, when it was coming on for hearing it transpired that at the 31 January 2022 annual general meeting of the respondent a new committee was elected, and Mr Baker replaced Mr Kelly as Secretary.
- [4] The new committee was then given notice of the hearing of the substantive minor civil dispute application listed for 18 February 2022. Despite having no authority, Mr Kelly emailed the appellant's lawyers providing a copy of submissions with suggested orders for the Tribunal to make.
- [5] Unfortunately, for the lot owners of the respondent scheme, a number of them were kept in the dark about the fencing dispute with the appellant. It would seem, that the committee did not pass a resolution under s 312(1)(b) of the *Body Corporate and Community Management Act* approving the expenditure for legal proceedings and the commencement of the minor civil dispute proceeding against the appellant. Because of this, the appellant applied at the hearing of the application that it be dismissed pursuant to s 47(1)(a)-(b) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). It also sought an order for costs against the respondent and Mr Kelly personally. There could be no order for costs against the respondent because this was a minor civil dispute matter, save for the costs allowed in QCAT Rule 83.
- [6] On hearing the submissions, the Tribunal dismissed the application but adjourned the question of costs against Mr Kelly to give him an opportunity to be heard, as is required by s 103 of the QCAT Act.
- [7] The question of costs came on for further consideration on 8 March 2022. The application for costs was dismissed. The essential reason was that the Tribunal held it did not have jurisdiction to make orders for costs against a representative of the respondent in a minor civil dispute proceeding.
- [8] From that decision the appellant filed an application for leave to appeal or appeal. The grounds of appeal are set out in the submissions filed with the application and are, in summary, as follows:

1. The decision was wrong in fact because the adjudicator assumed that they were sought against the respondent as a party but in fact were sought against Mr Kelly personally in the capacity as the respondent's representative pursuant to s 47(2)(c) and s 103(1) of the QCAT Act;
  2. The decision was wrong in law because the Tribunal could make costs orders against Mr Kelly personally as the respondent's representative pursuant to s 47(2)(c) and s 103(1) of the QCAT Act;
  3. The constraints relied on by the Tribunal under s 102 of the QCAT Act and QCAT Rule 83 did not apply to costs orders against representatives.
  4. There were no constraints on the Tribunal making costs orders against Mr Kelly
- [9] I propose to accept for the purpose of the argument mounted by the appellant that there are grounds for a costs order against Mr Kelly because of his conduct of the minor civil dispute proceeding.
- [10] As this is an appeal brought under s 142(3)(a)(i) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) in respect of a decision in a proceeding for minor civil dispute an appeal may be made only if the party has obtained leave of the tribunal. Leave to appeal will usually only be granted where there is a reasonable argument the decision was attended by error, or that an appeal is necessary to correct the substantial injustice caused by the error.<sup>1</sup> The substantive ground of appeal is on the basis of an error of law. As this appeal involves an important question of law, that is the interpretation of s 103 of the QCAT Act, I propose to grant leave to appeal.
- [11] In deciding not to award costs, the learned Adjudicator (as he then was) relied on s 102(2) of the QCAT Act. It provides that:
- However, the only costs the tribunal may award under subsection (1) against a party to a proceeding for a minor civil dispute are the costs stated in the rules as costs that may be awarded for minor civil disputes under this section.
- [12] Rule 83 deals with costs that can be awarded in minor civil disputes other than minor debts and provides:
- For section 102 of the Act, the tribunal may award costs against a party to a proceeding for a minor civil dispute other than a minor debt claim—
- (a) only if the party is a respondent against whom the tribunal has made a final decision; and
  - (b) only to order the party to pay to the applicant the amount of any prescribed fee paid by the applicant on filing the application for the proceeding.
- [13] The originating claim here was not a minor debt claim but a dividing fences dispute.
- [14] One then turns to s 103 of the QCAT dealing with costs against representatives in the interest of justice:

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<sup>1</sup> *Terera & Anor v Clifford* [2017] QCA 181.

- (1) If the tribunal considers a representative of a party to a proceeding, rather than the party, is responsible for unnecessarily disadvantaging another party to the proceeding as mentioned in section 102(3)(a), the tribunal may make a costs order requiring the representative to pay a stated amount to the other party as compensation for the unnecessary costs.
- (2) Before making a costs order under subsection (1), the tribunal must give the representative a reasonable opportunity to be heard in relation to making the is order.

[15] Proceeding is defined in schedule 3 of the QCAT Act as:

generally—means a proceeding before the tribunal, including an appeal before the appeal tribunal and a proceeding relating to an application for leave to appeal to the appeal tribunal; or ...

[16] The proceeding here was a minor civil dispute proceeding. That much is clear because the definition of minor civil dispute in the Dictionary in Schedule 3 of the QCAT includes:

a claim that is the subject of a dispute under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, chapter 2 and is for an amount not more than the prescribed amount; or

[17] For the appellant to succeed in the appeal, it must establish that s 103 of the Act is a stand-alone provision and applies irrespective of the nature of the proceeding in QCAT. QCAT exercises original jurisdiction for minor civil disputes under the QCAT Act unlike many of the Acts that confer jurisdiction on QCAT. Some even, despite s 100, confer jurisdiction to award costs.<sup>2</sup> However, there can be no doubt that s 102 specifically restricts the costs that can be awarded in a minor civil dispute proceeding are those under Rule 83. As the then President of the Tribunal said in *Earthworks Mechanical Repairs and Service Pty Ltd v Khan*.<sup>3</sup>

The tribunal expects each party to bear its own costs of a proceeding. If the tribunal does order costs in a minor civil dispute proceeding, rule 83 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) (“QCAT Rules”) limits the costs payable to the filing fee.

- [18] Also, to be clear, I do not take the appellant’s submission to be to the contrary. The question then is despite this caveat on costs in minor civil dispute proceedings does s 103 open the door for a costs order against Mr Kelly. In my view it does not.
- [19] Firstly, under s 102(2) the Tribunal may only award costs against a party to a proceeding if the party is a respondent against whom a final decision has been made. It is not contested that Mr Kelly is not a respondent against whom a final decision has been made.
- [20] Secondly, if reliance is placed on s 103 it has to be construed having regard the purpose<sup>4</sup> of Division 6 of the QCAT Act which is to limit costs unless the interest of justice require the Tribunal to make a costs order. With that in mind s 103 specifically refers to making a costs order against a representative, *rather than the*

<sup>2</sup> See *Queensland Building Construction and Commission Act* s 77(3)

<sup>3</sup> [2015] QCATA41; also *Cullen v Ogden* [2020] QCATA 33.

<sup>4</sup> *Wallaby Grip (BAE) Pty Ltd & Anor v WorkCover Qld & Anor* [2022] QCA 204 at [22].

*party*.<sup>5</sup> The reference to “rather than the party” applies to circumstances where costs can be awarded against a party, which generally, can be any other type of proceeding in the Tribunal, except for a minor civil dispute proceeding. Therefore, and for the reasons stated above, in particular s 102(2) a costs order could never be made against a party in a minor civil dispute proceeding, except for costs under Rule 83. It follows, in my respectful view, that if a costs order cannot be made against a party in a minor civil dispute proceeding, it cannot be made against a representative of the party under s 103.

[21] For these reasons the decision below must stand. The orders of the Tribunal will be that:

- (a) Leave to appeal is granted.
- (b) The appeal is dismissed.

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<sup>5</sup> My italics.