**QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL**

CITATION:

*Wrights Electrical Services v Monazeh* [2019] QCATA 171

PARTIES:

**WRIGHTS ELECTRICAL SERVICES**

(appellant)

**v**

**ABBAS MONAZEH**

(respondent)

APPLICATION NO/S:

APL143-19

ORIGINATING APPLICATION NO/S:

MCDO230/19

MATTER TYPE:

Appeals

DELIVERED ON:

18 December 2019

HEARING DATE:

11 December 2019

HEARD AT:

Brisbane

DECISION OF:

Member Hughes

ORDERS:

**Leave to appeal refused.**

CATCHWORDS:

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – where fresh evidence – where not explanation for not obtaining evidence earlier – where little evidential value – interference with findings of Tribunal below – functions of appellate tribunal – where no valid ground of appeal raised – where findings open on evidence – where no reasonably arguable case of Tribunal in error – where no reasonable prospect of substantive relief on appeal

*Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 121

*Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175

*Bradlyn Nominees Pty Ltd v Saikovski* [2012] QCATA 39

*Cachia v Grech* [2009] NSWCA 232

*Clarke v Japan Machines (Australia) Pty Ltd* [1984] 1 Qd R 404

*Creek v Raine & Horne Mossman* [2011] QCATA 226

*Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388

*McIver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577

*Piric & Anor v Claudia Tillier Holdings Pty Ltd* [2012] QCATA 152

*QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41

APPEARANCES & REPRESENTATION:

Applicant:

Self-represented

Respondent:

Self-represented

**REASONS FOR DECISION**

[1] Abbas Monazeh contracted Wrights Electrical Services to do electrical work. Wrights did some of the work. Mr Monazeh claimed they did not finish the job. He obtained a quote to finish for $4,389.00. Two Justices of the Peace ordered Wrights pay this to Mr Monazeh plus his filing fee of $120.50.

[2] Wrights has applied for leave to appeal that decision.

[3] This extract from the original hearing captures the crux of the learned Justices’ decision (my emphasis):

…there is a work authorisation form that was altered by Mr Mon, contains two clauses that weren’t in your original one, and were sent back to Wright before any work was commenced. Whiles I accept your evidence that it wasn’t signed by Wright Electrical, **by their conduct they have indicated that they accepted the terms of that work authorisation**.

[4] As part of its appeal, Wrights filed an email that it claims proves the scope of the work was limited to reticulation only.

[5] The email is fresh evidence. The Appeal Tribunal will only accept fresh evidence if it was not reasonably available at the time the proceeding was heard and determined. Ordinarily, an applicant for leave to adduce fresh evidence must satisfy three tests:

(a) Could the parties have obtained the evidence with reasonable diligence for use at the trial?

(b) If allowed, would the evidence probably have an important impact on the result of the case?

(c) Is the evidence credible?

[6] The email was only obtained some four months after the hearing and has little evidential value. Wrights did not explain why it did not attempt to obtain this evidence earlier, other than it did not believe it necessary. The email is not attached to any sworn statement. Moreover, the email does not address the discussions between Mr Mon and Mr Nick Wright or the written variation to the scope of work. The email should not be admitted into evidence.

[7] In determining whether to grant leave, the Tribunal will consider established principles including:

(a) whether there is a reasonably arguable case of error in the primary decision;

(b) whether there is a reasonable prospect that the appellant will obtain substantive relief;

(c) whether leave is needed to correct a substantial injustice caused by some error; and

(d) whether there is a question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage.

[8] Wrights’ application for leave to appeal does not address any of these. Instead, it sought to reargue its case. Leave will not be granted where a party simply desires to re-argue the case on existing or additional evidence. A clear purpose of the requirement for leave, before a party has the right to appeal, is to prevent any attempt to simply conduct a retrial on the merits of the case. An application for leave to appeal is not, and should not be an attempt to reargue a party’s case at the initial hearing.

[9] Nothing in the material or the transcript persuades the Appeal Tribunal that the learned Justices’ findings were not open to the Tribunal. Mr Monazeh attended the hearing. He gave direct oral evidence of discussions before work started with Nick Wright, operations manager. Mr Wright was a direct witness to these discussions, yet did not attend the hearing. Mr Monazeh’s evidence was consistent with the work authorisation he signed and returned to Wrights and with a later email from Wrights.

[10] The learned Justices’ finding that Wrights accepted Mr Monazeh’s variation to the scope of work was therefore not only open on the evidence, it was based on the best available evidence. Having considered material filed with the application and oral evidence from Mr Monazeh at the hearing, the learned Justices were in the best position to assess credit and make findings accordingly.

[11] Wrights also submitted that Mr Monazeh chose the higher of two quotes. The learned Justices only had to award an amount they considered was reasonable, based on the evidence. Wrights did not contest the quote at the original hearing. The appeal process is not an opportunity for a party to again present their case. It is the means to correct an error by the Tribunal that decided the proceeding. It was therefore open for the learned Justices to accept this uncontested evidence.

[12] The minor civil disputes jurisdiction requires the Tribunal to deal with matters fairly, quickly and economically. Wrights did not make its direct witness or other rebuttal evidence available at the original hearing. It cannot now expect a different outcome by simply re-arguing its case on appeal:

The statutory regime under which QCAT operates places obligations upon parties themselves to take care in their dealings with Tribunal matters, and to act in their own best interests. QCAT’s resources for the resolution of disputes are in high demand and serve, as the High Court has recently observed in relation to court resources, ‘… the public as a whole, not merely the parties to the proceedings’. Finality in litigation is highly desirable, because any further action beyond the hearing can be costly and unnecessarily burdensome on the parties.

[13] The Tribunal’s decision was therefore appropriate and the Appeal Tribunal can find no reason to come to a different view.

**Should the Appeal Tribunal grant leave to appeal?**

[14] Having read the transcript and considered the evidence, I find nothing to indicate that the Tribunal acted on a wrong principle, or made mistakes of fact affecting their decision, or were influenced by irrelevant matters. The evidence was capable of supporting the Tribunal’s conclusions.

[15] There is no question of general importance for the Appeal Tribunal to determine. There is no reasonably arguable case that the Tribunal was in error. There is no reasonable prospect of substantive relief on appeal. There is no evidence that a substantial injustice will result if leave is not granted.

[16] Leave to appeal is refused.