QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL

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| CITATION: | Thang Long Pty Ltd v CTS Sunstate Group Pty Ltd [2022] QCATA 18  |
| PARTIES: | thang long pty ltd  |
|  | (applicant) |
|  | **v** |
|  | cts sunstate group pty ltd |
|  | (respondent) |
| APPLICATION NO: | APL096-21 |
| MATTER TYPE: | Other minor civil dispute matters |
| DELIVERED ON:  | 31 January 2022 |
| HEARING DATE: | On the Papers |
| HEARD AT: | Brisbane |
| DECISION OF: | Dr J R Forbes |
| ORDERS: | 1. **The application to adduce additional evidence is dismissed.**
2. **The application for leave to appeal is dismissed.**
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| CATCHWORDS: | APPEAL – APPLICATION FOR LEAVE TO APPEAL – MINOR CIVIL CLAIM – where judgment entered for debt – where no error in conduct of trial is alleged – where judgment debtor seeks leave to adduce new evidence – whether proposed evidence satisfies established test for admission of new evidence – where test not satisfied – applications for leave to appeal and to adduce additional evidence dismissed*Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 3, s 4*Queensland Civil and Administrative Tribunal Rules 2009* (Qld) r 48*Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175*Booth v Fourmeninapub Pty Ltd* [2020] NSWCA 57 Coulton v Holcombe (1986) 162 CLR 1*Drew v Bundaberg Regional Council* [2011] QCA 359*Felton and Anor v Raine and Horne Real Estate* [2011] QCATA 330*Hawkins v Pender Bros Pty Ltd* [1990] 1 Qd R 135*Housing Commission of NSW v Tatmar Pastoral Co Pty Ltd* [1983] 3 NSWLR 378*Hsiao v Fazzari* [2020] HCA 35; 383 ALR 446*Osmond v Public Service Board of NSW* [1984] 3 NSWLR 447 *Pappas v Meiklejohn’s Accountants* [2017] QCATA 60 *Queensland Police Service v Messer* [2016] QDC 214*QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41; [2008] QCA 257*R v Vaughan* [2011] QCA 234*Sali v SPC Limited* (1993) 67 ALJR 841*The Pot Man Pty Ltd v Reaoch* [2011] QCATA 318*Wong v Jani-King Franchising Inc* [2014] QCA 76  |
| APPEARANCES & REPRESENTATION: | Mr C S Nguyen for the applicantMr G M North for the respondent |

#### REASONS FOR DECISION

#### Introduction

1. The applicant (`Thang’) has a providor’s business at Progress Road, Wacol. The respondent (`CTS’) of Thagoona providescommercial refrigeration maintenance and repair services.
2. In or about 2006 CTS installed refrigerators at Thang’s premises, and from time to time serviced that equipment. These proceedings concern payment for work done by CTS on 11 May 2020 and 20 July 2020 respectively. CTS claims that Thang owes it $1,820.85 for the work done in May, and $3,258.59 for the service in July.

**The issues**

1. However, Thang refuses to pay those amounts, alleging that CTS’ failure to hold necessary licences under either or both of the *Building Act 1975* (Qld)and the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (Cth) debars it from recovering the sums claimed.
2. In response CTS asserts that at the relevant times it was fully and duly licensed, and instituted these minor debt proceedings for a total of $5,079.44. Thang denies liability.

**Primary decision**

1. The trial took place on 17 March 2021, when the tribunal found for CTS and ordered Thang to pay that company the sum of $4,856.
2. The record of the hearing is brief. Simple cases do not require elaborate reasons.[[1]](#footnote-1) Quantum was not in issue, it was common ground that the work was done (albeit not to Thang’s subsequent approval) and on each occasion Thang signed acknowledgments of satisfaction. There is no suggestion that those acknowledgments are void.
3. There were some generalised complaints about negligence, which were summarily and properly dismissed. Counterclaims may not be appended to a minor debt claim[[2]](#footnote-2); besides, negligence was not pleaded and no evidence of negligence was produced until one week after the trial.[[3]](#footnote-3)

**Additional evidence?**

1. For present purposes the sole question is whether certain `new’ evidence should be admitted on Thang’s behalf.
2. The evidence in question relates to searches made by Thang after the hearing was completed, purporting to show that in May and July 2020 CTS did not hold requisite licences from the Queensland Building and Construction Commission and a Commonwealth entity, the Australian Refrigeration Council (`ARC’).
3. This application for leave is not an occasion to judge the merits of that evidence, but merely whether it should be admitted now, the primary decision notwithstanding. If it were admitted, the matter would be remitted for retrial, at which stage the merits of the licensing issues would be determined.

**The importance of finality**

1. Permission to introduce post-trial evidence is not given lightly. Finality of litigation is a firm policy of the law[[4]](#footnote-4), particularly in tribunals where the legislature expects proceedings to be relatively simple and expeditious.[[5]](#footnote-5) Indeed the legislative purpose of the QCAT Act’s leave-to-appeal provision is to ensure that the primary decision will normally be final. Trials are not practice sessions or preliminary skirmishes[[6]](#footnote-6) to be followed by more carefully considered re-runs with the benefit of afterthoughts. Unfortunately that is a common misconception of the function of an application for leave, and it appears that requests for leave to adduce `new’ evidence are an increasingly popular method of attempting to secure re-trials But as Morzone DCJ observed in *Queensland Police Service v Messer*:

[A]n appeal is not a forum for parties to get `a second bite of the cherry’ by remedying an evidentiary deficiency and presenting it for the first time at the appeal hearing.[[7]](#footnote-7)

1. In the interests of finality the law sets a strict test for the admission of `new’ or `fresh’ evidence. The material in question must be evidence not reasonably available to the applicant at the time of the trial; it must be credible, and, if accepted, likely to have a substantial effect on the result.[[8]](#footnote-8) In this case the information about State and Commonwealth registrations was a matter of public record well before the trial on 17 March 2021. Thang discovered the Queensland position, as he sees it, after a week’s reflection and a `bit of research’.[[9]](#footnote-9) Similarly, he applied the same simple bit of research to the ARC register on 9 June 2021.[[10]](#footnote-10) No reason, let alone an acceptable one, is given for the postponement of those `researches’ until after the trial.

**Resolution**

1. The material that Thang now seeks to adduce does not satisfy the test of fresh evidence. The application to tender it must therefore be dismissed.
2. No appellable error in the conduct of the trial itself is alleged. A leave application is not itself an appeal, but an attempt to show a reasonably arguable case of appellable error, that is an error of law, or radical departure from due process resulting in substantial injustice.[[11]](#footnote-11) This case does not raise issues of that kind.
3. Accordingly the application for leave to appeal must also be dismissed.

**ORDERS**

1. The application to adduce additional evidence is dismissed.
2. The application for leave to appeal is dismissed.
1. *Housing Commission of NSW v Tatmar Pastoral Co Pty Ltd* [1983] 3 NSWLR 378 at 386; *Osmond v Public Service Board of NSW* [1984] 3 NSWLR 447 at 467. [↑](#footnote-ref-1)
2. *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) r 48(3). V [↑](#footnote-ref-2)
3. Report of Coldchill Refrigeration 26 March 2021. [↑](#footnote-ref-3)
4. *Hsiao v Fazzari* [2020] HCA 35; 383 ALR 446 at [44]; *R v Vaughan* [2011] QCA 234 at [5]; *Pappas v Meiklejohn’s Accountants* [2017] QCATA 60 at [10] (Thomas QC); *The Pot Man Pty Ltd v Reaoch* [2011] QCATA 318 at [8] and [10] per Wilson P; *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175 at 217; *Sali v SPC Limited* (1993) 67 ALJR 841 at 843-844. [↑](#footnote-ref-4)
5. QCAT Act s 3(b), s 4(c); [↑](#footnote-ref-5)
6. Coulton v Holcombe (1986) 162 CLR 1 at 7. [↑](#footnote-ref-6)
7. [2016] QDC 214 at [23]. [↑](#footnote-ref-7)
8. *Hawkins v Pender Bros Pty Ltd* [1990] 1 Qd R 135; *Wong v Jani-King Franchising Inc* [2014] QCA 76; *Booth v Fourmeninapub Pty Ltd* [2020] NSWCA 57 at [25]. [↑](#footnote-ref-8)
9. Oral submission (Nguyen) on hearing of application 27 January 2022; Application for leave to appeal filed 8 April 2021 (annexure paragraph 2(f); QBCC licence search issued 31 March 2021. [↑](#footnote-ref-9)
10. Exchange of emails Thang to and from ARC 9 June 2021. [↑](#footnote-ref-10)
11. *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41; [2008] QCA 257 at [6]; *Drew v Bundaberg Regional Council* [2012] QPELR 350; [2011] QCA 359 at [18]; *Felton and Anor v Raine and Horne Real Estate* [2011] QCATA 330 at [19]. [↑](#footnote-ref-11)