QUEENSLAND CIVIL AND   
ADMINISTRATIVE TRIBUNAL

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| CITATION: | Allan Arthur Bazley v Joel Henderson t/as J. R. Henderson [2022] QCAT 207 |
| PARTIES: | |  | | --- | | Allan Arthur Bazley | | (applicant) | |
|  | **v** |
|  | |  | | --- | | Joel Henderson t/as j. r. henderson | | (respondent) | |
| APPLICATION NO/S: | APL116-21 |
| MATTER TYPE: | Other minor civil dispute matters |
| DELIVERED ON: | 21 June 2022 |
| HEARING DATE: | 15 June 2022 |
| HEARD AT: | Brisbane |
| DECISION OF: | Judicial Member Forrest SC |
| ORDERS: | The application for leave to appeal is dismissed. |
| CATCHWORDS: | APPEAL AND NEW TRIAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – where the Applicant contracted the Respondent for a roof painting job – where the Respondent started work and the Applicant was disappointed in the work and subsequently refused to pay the Respondent – where the Magistrate found the Applicant had repudiated the contract and the Applicant was owed the entire contract price – where the Applicant did not demonstrate that the Magistrate had erred in his findings – where the application for leave to appeal is dismissed  *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 142(3)(a)(i), s 142(3)(b)  *G H Myers & Co v Brent Cross Service Co* [1934] 1 KB 46  *Pickering v McArthur* [2005] QCA 294 |
| |  |  | | --- | --- | | 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. This is an application for leave to appeal and, if granted, an appeal against the orders of a Magistrate sitting as a Tribunal Member in a Minor Civil Dispute.
2. The proceedings arise out of a dispute between a homeowner, the Applicant, and a painting contractor, the Respondent, about payment for a roof painting job the Respondent was contracted to do at the Applicant’s home.
3. The Applicant did not pay the Respondent any amount for the work that he undertook at the Applicant’s home. The Respondent claimed against the Applicant in this Tribunal in its jurisdiction to hear Minor Civil Matters, seeking payment. The learned Magistrate sitting as the Tribunal at first instance heard and determined the matter, making an Order that the Applicant pay the Respondent the sum of $2,300 within 14 days. That was on 30 March 2021.

# The Appeal

1. The Applicant seeks leave to appeal that decision.
2. Given this is an appeal from a decision made in the Tribunal’s minor civil dispute jurisdiction, leave to appeal must first be obtained before any appeal proceeds.[[1]](#footnote-2)
3. Leave to appeal is also required where an appeal is in relation to questions of fact and/or mixed fact and law.[[2]](#footnote-3)
4. Leave to appeal will usually only be granted where an appeal is necessary to correct a substantial injustice to the appellant and where there is a reasonable argument that there is an error to be corrected.[[3]](#footnote-4)

# The First Instance Decision

1. The learned Magistrate set out the evidence he had heard. He acknowledged that there were some conflicts between the two oral versions but said that he had the benefit of the email communication between the parties which he said “were helpful to resolve any conflicts that [he] found in the oral testimony between the parties”.
2. The learned Magistrate made the following findings of fact:-

* The Applicant contracted with the Respondent to paint his roof.
* The original quote was $3,200 plus GST but that was changed at a later date to remove the GST amount and the amount became $3,200 without GST as the Respondent was no longer registered for GST.
* The Applicant paid the Respondent a deposit of $400.
* Commencement of the work was delayed and the Respondent offered to reduce his price by $500.
* The Applicant accepted that offer and the work commenced.
* The total contract price was, accordingly, $2,700.
* The Applicant terminated the contract when he refused to allow the Respondent back onto his property to complete the work when the Respondent turned up there to do that.
* The Applicant had an opinion that the work the Respondent had done at that time was a “mess”.
* The quality of the work had to be assessed on the basis that it was incomplete.
* The Applicant would not let the Respondent clean up any “errors” or “mess” or to complete the contracted work.
* The Respondent then asked to be paid the amount of $3,200 but he was not entitled to do so, given that the agreed price had been $2,700 and the Applicant had paid a $400 deposit already.

1. The learned Magistrate went on to find that the Applicant “should have allowed [the Respondent] to complete the work” and that “[the Respondent] is entitled to be paid for the work he has done pursuant to the agreement that was unlawfully terminated by [the Applicant]”.

# The Applicant’s Grounds of Appeal and my consideration of them

1. The Applicant argues that all of his evidence was not considered. I understand that part of that ground is that three of his four witnesses were unable to be cross-examined because of work commitments. That does not mean that their evidence was not considered. Of course, the weight that could be given to their evidence where they were not available to be cross-examined by the Respondent is significantly reduced, but in any event, it is clear on a reading of the learned Magistrate’s reasons that he apparently accepted that there were some issues with the quality of the work that the Respondent had done up to the time that the contract was terminated by the Applicant. That suggests that he did consider and accept the evidence about this.
2. The Applicant further argues, I distil, that the learned Magistrate erred in determining that the Applicant should have allowed the Respondent to complete the work and that this was an “unlawful” termination of the contract. In support of his apparent submission that the learned Magistrate erred in this way, the Applicant again presents as a matter of fact that he terminated the contract because the Respondent’s “workmanship showed [the Applicant] that he was not competent in painting a roof … because of the patchiness in the paint on [his] roof”.
3. Respectfully, the balance of the Applicant’s submissions included in his Grounds of Appeal constitute the giving of further evidence or the making of further submissions about the quality of the Respondent’s work.

# Did the learned Magistrate err in the determination complained of?

1. The learned Magistrate has plainly determined that the Applicant wrongfully repudiated the contract before its completion and that as such the Respondent was entitled to be compensated by being paid the entire contract price that had been agreed upon. The Applicant’s submission is that he did not wrongfully repudiate the contract, arguing that he was entitled to do so because of the poor part-performance of the contract by the Respondent to the point of that termination.
2. There was no one single written document constituting the contract with terms and conditions in writing. It was a simple contract, the terms of which were readily found by the learned Magistrate some of which were set out above.
3. Of course, the common law implies certain terms into a contract, particularly where the parties have not entered into a detailed written contract. In a contract such as the one these parties entered into, the common law implies a warranty given by the painter that he will use reasonable care in doing the work, doing it in a workmanlike manner and supplying materials that are of good quality and fit for the purpose for which they are supplied.[[4]](#footnote-5)
4. I have no doubt that the Applicant would say “well, the Respondent did not meet the standard of that implied warranty.” However, that is not enough, for breach of an implied warranty does not entitle the other party to terminate the contract and not pay the agreed price. It only entitles the other party who alleges the breach to sue for damages for breach of the warranty. Of course, whilst the Respondent sought to do so in this case, by counterclaim, the Tribunal at first instance could not entertain any counterclaim. That was correctly stated by the learned Magistrate and not cavilled with by the Applicant.
5. The learned Magistrate found that the contract was not complete, and that the Respondent was seeking to go back on to the Applicant’s property to complete his part of the contract by cleaning up the things such as overspray that needed cleaning up and to address the Applicant’s concerns about the nature of the finish on the roof. The learned Magistrate found that the Applicant, in preventing the Respondent from doing that and refusing to pay him the balance owing under the contract, wrongfully (he described it as “unlawful”) terminated the contract.
6. Respectfully, the Applicant has not demonstrated that the learned Magistrate erred in so finding, or that on the evidence that was before him, such a finding was not available to him.
7. Accordingly, the Application for leave to appeal must be dismissed.

1. *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 142(3)(a)(i). [↑](#footnote-ref-2)
2. *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 142(3)(b). [↑](#footnote-ref-3)
3. *Pickering v McArthur* [2005] QCA 294. [↑](#footnote-ref-4)
4. See *G H Myers & Co v Brent Cross Service Co* [1934] 1 KB 46 at 55 (adopted *Reg Glass Pty Ltd v Rivers Locking Systems Pty Ltd* (1968) 120 CLR 516). [↑](#footnote-ref-5)