



Commercial and Consumer Tribunal

CITATION: *RICKETTS v QUEENSLAND BUILDING SERVICES
AUTHORITY* [2009] CCT QR058-09

PARTIES: RICKETTS Paul

V

QUEENSLAND BUILDING SERVICES AUTHORITY

APPLICATION NUMBER: QR058-09

DELIVERED ON: 11 November 2009

DELIVERED AT: Brisbane

**DECISION ON THE
PAPERS OF:** Ms J Schafer

CATCHWORDS: *Costs-Commercial and Consumer Tribunal Act 2003*
sections 70 and 71 (4)

**DECISION CATEGORY
CLASSIFICATION:** C

**NUMBER OF
PARAGRAPHS:** 11

REASONS FOR DECISION

Introduction

1 On 15 October 2009 the tribunal dismissed the applicant's application and confirmed the decision of the respondent to refuse to categorise the applicant as a permitted individual.

Background

2 Pursuant to orders made on 15 October 2009 the respondent filed an application for costs on 20 October 2009 and the applicant filed submissions in reply on 28 October 2009.

Respondent's Submissions

3 The respondent sought costs on the basis that it had reasonably incurred the costs of legal representation and that it had been successful before the tribunal. It contended that it is in the interests of justice and the public that the respondent's resources not be eroded for costs incurred. It refers to its success at the hearing, its model conduct, that some complexity was involved, both parties were legally represented, there was no contravention of legislation by either party, that the applicant was afforded natural justice and that a number of matters were elicited in the course of the hearing that were not known to the respondent.

Applicant's Submissions

4 The applicant referred to section 70 of the *Commercial and Consumer Tribunal Act 2003* ("the Act") and the expressed legislative intent. He submits that the interests of justice do not require a departure from the proposition that each party should bear their own costs. The applicant relies upon the provisions of section 71 (5) of the Act. In addition the applicant says that he conducted his application in the appropriate manner, no offer was made by the respondent, the facts were not complex, the respondent did not need to call evidence, the hearing was resolved expeditiously and the applicant was not in breach of the Act.

Legislation

"70 Purposes of div 7

The main purpose of this division is to have parties pay their own costs unless the interests of justice require otherwise.

71 Costs

(1) In a proceeding, the tribunal may award the costs it considers appropriate on—

- (a) the application of a party to the proceeding; or*
- (b) its own initiative.*

(2) The costs the tribunal may award may be awarded at any stage of the proceeding or after the proceeding has ended.

(3) *If the tribunal awards costs during a proceeding, the tribunal may order that the costs not be assessed until the proceeding ends.*

(4) *In deciding whether to award costs, and the amount of the costs, the tribunal may have regard to the following—*

- (a) the outcome of the proceeding;*
- (b) the conduct of the parties to the proceeding before and during the proceeding;*
- (c) the nature and complexity of the proceeding;*
- (d) the relative strengths of the claims made by each of the parties to the proceeding;*
- (e) any contravention of an Act by a party to the proceeding;*
- (f) for a proceeding to which a State agency is a party, whether the other party to the proceeding was afforded natural justice by the State agency;*
- (g) anything else the tribunal considers relevant.*

Examples of paragraph (g)—

The tribunal may consider whether a party to a proceeding is acting in a way that unreasonably disadvantages another party to the proceeding.

The tribunal may consider whether the proceeding, or a part of the proceeding, has been frivolous or vexatious.”

Decision

5 As has been observed, the decision of the Court of Appeal in *Tamawood Limited v Paans*¹ is authoritative on the award of costs by the Tribunal. It held that sections 70 and 71 imposed a general rule that good reason was to be shown in the interests of justice for making an award of costs in proceedings before the Tribunal and that a finding, that a successful party reasonably obtained legal representation because of the complexity of the case, could be a sufficient basis for an award of costs by the tribunal in that party's favour, at least in the absence of any countervailing considerations.

6 In deciding whether to award costs the Tribunal may have regard to the factors set out in section 71(4) of the Act which are set out below, together with comment on their applicability to this case:

- (a) outcome of the proceedings-clearly favoured the respondent;
- (b) the conduct of the parties before and during the proceedings- was appropriate;
- (c) the nature and complexity of the proceedings- the review proceedings did involve some complexity because of the need to discern facts over time leading up to the occurrence of the relevant event. Further the legislative provisions of the *Queensland Building Services Authority Act 1991* under consideration are not free from difficulty;
- (d) the relative strengths of the claims made by each party to the proceedings- clearly favoured the respondent. The applicant's position had little, if any, merit;

¹ [2005] 2 Qld R 101

- (e) any contravention of an Act by any party to the proceeding-none; and
- (f) whether the Authority afforded the applicant natural justice-it did.

7 All of these factors militate to the conclusion that the Authority is entitled to its costs. In my view it reasonably had legal representation and incurred legal costs defending the proceedings. I adopt the remarks of Member Lohrisch that in such proceedings the Authority is fulfilling its role as industry regulator.² This case falls into the category of cases of which Keane JA said in *Tamawood Limited v Paans* “in absence of countervailing considerations, where a party has been successful before the Tribunal, it could not rationally be said to be in the interests of justice to allow that success to be eroded by requiring that party to bear the costs of the representation that was reasonably necessary to achieve that outcome.”

Orders

8 The applicant will pay the respondent’s costs of and incidental to the proceedings on the standard basis on the District Court Scale as agreed or failing agreement, as assessed.

9 The respondent’s costs will be assessed as follows:

- (a) the respondent will deliver to the applicant an itemised claim for costs referring to the relevant items contained in the Scale;
- (b) if within fourteen (14) days of that delivery, the parties have not agreed to an amount for costs, the costs shall be assessed by Hickey & Garrett, Legal Cost Assessors of Level 21, 141 Queen Street, Brisbane QLD 4000.

10 The applicant will pay the respondent’s costs as agreed or assessed within fourteen (14) days of the date of agreement or the date of despatch of the assessment to him, as the case may be.

MS J SCHAFFER
CHAIRPERSON
Commercial and Consumer Tribunal

² *Horsburgh v Queensland Building services Authority* [2008] QCCTB 235

