# DISTRICT COURT OF QUEENSLAND

| | |
|---|---|
| CITATION: | *Egan v Cameron & Anor* [2021] QDC 66 |
| PARTIES: | **JENNIFER MAY EGAN**<br>(applicant)<br><br>**v**<br><br>**DUGALD CAMERON**<br>(first respondent)<br><br>**BODY CORPORATE FOR 57 GOLF LINKS ROAD BUDERIM**<br>(second respondent) |
| FILE NO/S: | 40/21 |
| DIVISION: | Appellate |
| PROCEEDING: | Application for leave to appeal |
| ORIGINATING COURT: | Maroochydore Magistrates Court |
| DELIVERED EX TEMPORE ON: | 31 March 2021 |
| DELIVERED AT: | Maroochydore |
| HEARING DATE: | 31 March 2021 |
| JUDGE: | Cash QC DCJ |
| ORDERS: | **1. The application is dismissed;**<br><br>**2. The applicant must pay the costs of the respondent;**<br><br>**3. The applicant may make written submissions concerning a certificate under the *Appeals Costs Fund Act* 1973 (Qld) within 14 days.** |
| CATCHWORDS: | APPLICATION FOR LEAVE TO APPEAL MAGISTRATES ORDER – APPEAL – PROCEDURE – COSTS – Where the applicant submits a denial of procedural fairness – whether an important question of law or justice arises – where costs follow the event |
| CASES: | *Ramzy v Body Corporate for GC3* [2012] QDC 397<br>*American Express International Incorporated v Hewitt* [1993] 2 Qd R 352<br>*Stead v State Government Insurance Office* [1986] 161 CLR 141 |
| LEGISLATION: | *Body Corporate and Community Management Act* 1997 (Qld), s 287<br>*Uniform Civil Procedure Rules* 1999 (Qld), r 761 |

*Magistrates Court Act* 1921 (Qld), s 45
*Appeals Costs Fund Act* 1973 (Qld)

COUNSEL: B Strangman for the applicant
A Messina for the first respondent
No appearance for the second respondent

SOLICITORS: Stratum Legal for the applicant
Clayton Utz for the first respondent

[1] HIS HONOUR: This is an application concerned with a proposed appeal against orders made by a Magistrate pursuant to the *Body Corporate and Community Management Act* 1997 (Qld) ('BCCM'). The real remedy sought by the applicant today is a stay of the orders made by the Magistrate pending the disposition of the appeal. But it is common ground that a stay cannot be ordered, pursuant to rule 761 of the *Uniform Civil Procedure Rules* 1999 (Qld), unless there is a competent appeal. It is also common ground that the applicant needs leave to appeal pursuant to section 45 of the *Magistrates Court Act* 1921 (Qld) and such leave may not be granted unless I am satisfied some important question of law or justice is involved.

[2] Because leave is necessary, it is agreed that I should decide this issue first. If leave is not granted, that will end the proceedings and make it unnecessary to decide whether or not a stay ought to be ordered. It is a requirement for leave that there be some important question of law or justice. This suggests that the case must be one of gravity, involving some important question of law or otherwise of public importance.[1] It has also been said that an important principle of justice requires that there be a question going beyond the consequences of the decision to the immediate parties to the proceedings.[2]

[3] It is appropriate to commence consideration of whether leave to appeal should be granted with a relatively brief summary of the dispute between the parties. The applicant and the first respondent together own a duplex at Buderim. There has been conflict in the past about the maintenance of at least common property, if not other parts of the premises. The result of this disputation was an adjudication made under the BCCM. The adjudicator ordered that an extraordinary general meeting be held to consider motions to carry out work at the premises. The body corporate, who is the second respondent in the application and who has not appeared, did not comply with the adjudicator's orders. No doubt this was because the body corporate consists of the applicant and the first respondent who are intractably in dispute.

[4] This failure to comply with the adjudication resulted in the present applicant bringing an application pursuant to section 287 of the BCCM for the appointment of an administrator. This application was made to a Magistrate and, in its terms as filed, went beyond orders that might be thought to be necessary to give effect to the adjudication. It sought that the administrator be given extraordinary powers to exercise all rights and obligations of the first and second respondent. It also sought that the administrator be either the applicant herself, or her and a body corporate manager, or failing that a body corporate manager that she chose. In the event that a body corporate manager was to be involved, the orders sought were such that the costs

---

1 *Ramzy v Body Corporate for GC3* [2012] QDC 397, at [41].
2 *American Express International Incorporated v Hewitt* [1993] 2 Qd R 352.

of the body corporate manager were to be paid solely by the first respondent. The ambitious nature of the application perhaps set the tone for what followed. It was an application that was never likely to succeed and it was one of the circumstances tending to indicate the applicant would be unlikely to contribute helpfully to the resolution of the dispute. Regrettably, though, the conduct of the Magistrate who made the decision did not assist in the just and efficient resolution of the dispute either.

[5] An order was made late last year adjourning the application, for mention only, in the Magistrates Court on 11 January 2021. The applicant appeared in person at that time and was assisted by her husband. He described himself as a retired solicitor who was 'very familiar with all the relevant law'. The first respondent appeared represented by counsel. The nature of what actually occurred on 11 January was the subject of submissions in this application. It was certainly not a mention. It might, perhaps, be described as some kind of directions hearing. The taxonomy though does not much matter. It is what was said on that occasion which is of relevance. There was discussion that clearly contemplated the applicant being permitted to file some evidence. At the end of that day's appearance there was a direction that the matter be set down again on 11 February 2021. At times during the appearances on the 11th of January the Magistrate showed a clear preference to hear from counsel for the respondent. That, in my view, reflected the degree of assistance he received from the applicant's husband who was allowed to make submissions on her behalf. Among the more unhelpful submissions he made were allegations of fraud, forgery and perjury. In the circumstances, it is unsurprising that the Magistrate turned to counsel for the respondent for assistance. There is, in my view, nothing in the conduct of the proceedings that day that makes me think the applicant was denied procedural fairness.

[6] However, after the matter was adjourned the Magistrate, seemingly of his own motion, caused to be issued an order. That order is found in the bundle of material behind tab 17 and it provided:

> (1) Adjourned to 11 February 2021 for decision on appointment of administrator;
>
> (2) Both parties to file brief response to the latest material filed on or before 09.00am 5 February 2021;
>
> (3) This is a decision only mention. No new material to be filed.

[7] Despite the valiant efforts of the first respondent to categorise that order as being not inconsistent with the discussion before the Magistrate on the 11th of January, it seems clear to me that the order, particularly order 3, which was not discussed with the parties, went beyond what had been considered. It would have been understood by the applicant as prohibiting the filing of further evidence after 11 January 2021. When the matter returned before the Magistrate on 11 February the Magistrate heard further submissions but there was no further evidence. On that day he made an order appointing an administrator as suggested by the respondent.

[8] It is to be observed that at no stage before 11 January did the applicant put on any evidence about who she said was a suitable administrator. The application she filed made it clear that she wanted that role for herself, or at least to control the administrator. In any event, the applicant is dissatisfied with the decision of the Magistrate and she seeks orders that would require another hearing to decide who should be the administrator, as well as some changes to the form of the order that do not seem to be of any real consequence. As a corollary of what she says ought to be

her success in the appeal, she also seeks to set aside an order that she pays the respondent's costs of the proceeding before the Magistrate.

[9] It is against that background that I turn to the question of leave. That may be dealt with, in my view, relatively simply. The two questions posed by section 45 (2) are whether there is an important question of law to be resolved or whether there is an important question of justice to be resolved. As to the former, it has been submitted by the applicant that the Magistrate misunderstood or misapplied the appropriate test for the appointment of an administrator. I do not think the Magistrate did misapply or misunderstand the test. The correct test was brought to his attention during the course of the appearances on 11 January 2021 and while it was not discussed by his Honour in the making of the orders there is, in my view, no proper basis for thinking that he misunderstood or misapplied the test. Perhaps more importantly, even if he did, that that does not raise an important question of law. There are in these proceedings no issues about the proper construction of the statute or a consideration of decided cases. At best for the applicant, this would be an example of a judicial officer misunderstanding or misapplying settled law. But that is not on its own sufficient to raise an important question of law.

[10] The second basis on which leave might be granted is if it raises an important question of justice. It is to be remembered that this concerns a question of justice that goes beyond the immediate consequences of the decision to the parties concerned. In relation to this point, the applicant presented the important question of justice as being the need to ensure confidence in the Courts by affording persons procedural fairness. In this regard she relies upon the decision of the High Court in *Stead v State Government Insurance Office* [1986] 161 CLR 141. It may readily be accepted that procedural fairness is one of the bedrock propositions of our justice system. But the absence of procedural fairness will not in every case require a rehearing. That is especially the case where there is the additional threshold through which the appeal must pass of section 45(2). It is not every error that must be corrected.

[11] In my view, the highest the case for the applicant rises concerns the order to not file material after 11 January 2021. That was wrong and, certainly, was an order that ought not to have been made without giving the parties the opportunity to make submissions. Wrong as that may be, it does not in my view rise to an important question of justice such that leave ought to be granted. That is so in the context of this particular matter, where the applicant sought orders for her own appointment or the appointment of an administrator of her choice, where she had not presented any material prior to 11 January as to who ought to be appointed administrator, and where her proposals as to who would be the administrator in the original application were, in my view, risible. It is to be remembered, as well, that this is a minor body corporate dispute in which the main concern of the applicant is the identity of the administrator.

[12] The applicant raises other points as to the sufficiency of the evidence before the Magistrate to come to the decision that he reached. None of these, in my view, raise an important question of law or justice. I am not persuaded in the circumstances that the applicant ought to be given leave to proceed with the appeal. The application for leave to appeal is dismissed.

…

[13] Costs ordinarily follow the event. The event here is the disposition of the application for leave in which the respondent has succeeded. The applicant has identified problems in the way in which the proceedings were conducted below and, in

particular, the direction or order of the Magistrate restricting filing. As I have said, that is a regrettable order to have been made, but it was not contributed to in any way by the respondent. In my view, there is no reason to deny the respondent its costs of the present application. I order that the applicant pay the costs of the respondent.

…

[14] I will make a third order that the applicant may make written submissions concerning a certificate under the *Appeals Costs Fund Act* within 14 days.