

**CITATION:** Scholefield v High Surf Resorts Pty Ltd [2013] QCATA 157

**PARTIES:** Ms Sarah Scholefield  
(Applicant/Appellant)  
V  
High Surf Resorts Pty Ltd  
(Respondent)

**APPLICATION NUMBER:** APL021 -13

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Peta Stilgoe, Senior Member**

**DELIVERED ON:** 29 May 2013

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. Leave to appeal granted.**
- 2. Appeal allowed.**
- 3. The decision of 19 November 2012 is set aside.**
- 4. The proceeding is remitted to the tribunal in its minor civil dispute jurisdiction at Southport for hearing.**

**CATCHWORDS:** MINOR CIVIL DISPUTE – where tenant signed holiday let for 3 months – whether holiday let – whether *Residential Tenancies and Rooming Accommodation Act* applied to tenancy agreement – where application to Residential Tenancy Authority made shortly after alleged breach – where application to tribunal made more than 6 months after alleged breach – whether application within time.

*Residential Tenancies and Rooming Accommodation Act* 2008 ss 31(1), 417(2), 419

*Dearman v Dearman* (1908) 7 CLR 549;  
*Fox v Percy* (2003) 214 CLR 118.

*Chambers v Jobling* (1986) 7 NSWLR 1  
*QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.  
*Cachia v Grech* [2009] NSWCA 232  
*Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388  
*Mclver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577  
*Clarke v Japan Machines (Australia) Pty Ltd* [1984] 1 Qd R 404

### **APPEARANCES and REPRESENTATION (if any):**

The appeal tribunal heard and determined this matter on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

### **REASONS FOR DECISION**

- [1] Ms Scholefield signed a three month holiday let for an apartment in Surfers Paradise. High Surf Resorts Pty Ltd managed the apartment. At some stage, Ms Scholefield left the apartment. High Surf changed the locks and put her goods into storage. She collected some of them but the balance went missing. Ms Scholefield filed a claim in the tribunal claiming damages for the loss of the goods. She also claimed return of a \$1,400 bond. The tribunal dismissed Ms Scholefield's claim.
- [2] Ms Scholefield wants to appeal that decision. She says the learned Adjudicator erred in finding that the tenancy agreement was not within the tribunal's jurisdiction. She also says that the learned Adjudicator erred in finding that she had not made a claim within six months of becoming aware of High Surf's breach of the tenancy agreement.
- [3] Because this is an appeal from a decision of the tribunal in its minor civil disputes jurisdiction, leave is necessary. The question whether or not leave to appeal should be granted is usually addressed according to established principles. Is there a reasonably arguable case of error in the primary decision?<sup>1</sup> Is there a reasonable prospect that the applicant will obtain substantive relief?<sup>2</sup> Is leave necessary to correct a substantial injustice caused by some error?<sup>3</sup> Is there a question of general importance upon which further argument, and a decision of the appeals tribunal, would be to the public advantage?<sup>4</sup>
- [4] Section 31(1) of the *Residential Tenancies and Rooming Accommodation Act 2008* states that the Act does not apply to a residential tenancy agreement if the right of occupancy is given for holiday purposes. The

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<sup>1</sup> *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

<sup>2</sup> *Cachia v Grech* [2009] NSWCA 232 at 2.

<sup>3</sup> *QUYD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

<sup>4</sup> *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388 at 389; *Mclver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577 at 578, 580.

learned Adjudicator relied upon this provision when she decided that the tribunal had no jurisdiction. However, s31(2) states that a right to occupy given for 6 weeks or longer is not taken to be for holiday purposes unless the contrary is proved. Ms Scholefield took the apartment for 3 months. Therefore s31(2) applied and, unless High Surf could prove otherwise, the tenancy agreement was not a holiday let.

- [5] Both parties have filed new material about this point. The evidence is not conclusive and the tribunal has not had the opportunity to question the parties about the evidence. Leave to appeal should be granted, the appeal allowed and the issue remitted to the tribunal for hearing.
- [6] The learned Adjudicator is correct that Ms Scholefield had to make an application within 6 months of becoming aware of any breach by High Surf<sup>5</sup>.
- [7] It is true that Ms Scholefield's application to the tribunal is outside the 6 month period. But s417(2) states that a reference to making an application about the dispute includes a reference to the making of a dispute resolution request to the Residential Tenancies Authority. Ms Scholefield made a dispute resolution request to the RTA in November 2011, well within the 6 month time limit. The learned Adjudicator erred in failing to consider this.
- [8] Leave to appeal should be granted, the appeal allowed and the question of compensation should be remitted to the tribunal for hearing.

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<sup>5</sup> RTRA Act s 419(3).