



CONSUMER, TRADER & TENANCY TRIBUNAL BULLETIN

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CASES

The full text of the judgments are available on the Internet at:
www.lawlink.nsw.gov.au/caselaw/caselaw.nsf/pages/sc

1. **Ross v CTTT & 2 Ors [2003] NSWSC 218**

An appeal was lodged to the Supreme Court concerning the Consumer, Trader and Tenancy Tribunal (CTTT) dealing with a matter ex parte, that is, in the absence of one of the parties. It was also raised that the CTTT denied the plaintiff an opportunity to be heard contrary to section 35 of the *Consumer, Trader and Tenancy Tribunal Act 2001*. Further, the plaintiff argued that the power conferred on the

Chairperson under section 68 (rehearing) cannot be delegated.

Section 25 states that “...the Registrar must cause notice of the time and place that is fixed for the hearing to be given to each party in the proceedings”. Master Harrison found that where a party does not attend a hearing, the Tribunal is entitled to hear a matter ex parte, if it is satisfied that the notice of the hearing was served on the party. Mr Ross gave evidence that he did not receive the notice of hearing, but the Supreme Court concluded that Mr Ross was not a credible witness and did not accept his explanation. The Supreme Court found that the decision of the Tribunal in relation to the hearing and rehearing were correct.

The Supreme Court also found that section 35 is not relevant to ex parte proceedings.

Further, the Supreme Court addressed the issue of procedural fairness and referred to **Kioa v West** (1985) 159 CLR 550 at 584-585 where the High Court found that “whether there is a denial of procedural fairness depends on the circumstances in each case”.

Turning to the question of the delegation of powers under section 68 of the Act, the Supreme Court confirmed that the Chairperson may delegate rehearing applications to Tribunal members for determination.

Appeal dismissed. Decision of the Tribunal affirmed.

2. **Collings Homes v Head & Ors [2002] NSWSC 1219**

Master Malpass of the Supreme Court looked at the meaning of ‘building claim’. Section 89B of the *Home Building Act 1989* confers jurisdiction on the CTTT. Section 84 defines building claim and the terms of the definition require recourse to section 3.

The type of services provided by the plaintiff in this case were: the design of project

homes which can be modified to meet individual requirements, provision of costings for building work, obtaining development approval and introducing a licensed builder who is prepared to enter into a building contract for a fixed price and procures execution of such building contract.

In this case, the stage had been reached where application had been made to council and a licensed builder procured who had signed the building contract. The defendants had paid a sum of \$20,000 to the plaintiff who had expended certain money. The defendant decided not to proceed and sought a refund of the money paid.

The Supreme Court found that this matter was not a 'building claim' as the services provided by the plaintiff did not fall within the definition of 'residential building work' and there was no 'residential building work' supplied by the person who had contracted to do that work. "To satisfy the definition of 'residential building work', the work must be involved in or involved in coordinating or supervising any work involved in the construction of a dwelling".

Orders of the Tribunal set aside.

3. Department of Housing v CTTT and anor [2003] NSWSC 150

Section 22(1)(b) of the *Residential Tenancies Act 1987* states "It is a term of every residential tenancy agreement that the landlord or the landlord's agent shall not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of the tenant in using the residential premises".

The relevant facts in this case are that there was a breach of the tenants right to quiet enjoyment and the right to reasonable peace, comfort and privacy due to the harassment of a neighbour, who was also a tenant of the Department of Housing. In its finding, the Tribunal detailed how the Department of the Housing was aware of the incidents occurring between its tenants and found that the failure of the Department to remedy this situation meant there was a breach of the tenancy and that compensation was payable.

Justice Shaw of the Supreme Court considered the construction of the word 'permit' in section 22(1)(b) of the Act. The Supreme

Court found that "the Tribunal was entitled to find that the failure to take any active steps to prevent the commission of further breaches amounts to an implied license to the disturbing tenants". Further, the Supreme Court stated that in the absence of injustice or legal error, the broad discretion of the Tribunal should be upheld.

Appeal dismissed.

ISSUES & GUIDELINES

1. Holiday Parks

Holiday Parks (Long-term Casual Occupation) Act 2002 is new legislation providing the CTTT with jurisdiction to deal with disputes over breaches of holiday park occupancy agreements in relation to long-term casuals. The *Holiday Parks (Long-term Casual Occupation) Regulation 2003* provides the prescribed form for the application to the Tribunal, which will soon be available on the CTTT's website. These applications are dealt with in the Tribunal's General Division.

The types of orders the Tribunal can make include: an order that a clause of the occupation agreement is void, an order that the site has been abandoned, an order for compensation for loss caused by abandonment of the site and an order for retrieval of uncollected goods.

2. Website

The CTTT's website is located at www.cttt.nsw.gov.au and provides information about the location of registries, fees, hearings and the conciliation process. Application forms can be downloaded from the website. Further, the website has a link to www.austlii.edu.au where Tribunal decisions can be viewed.

3. Chairperson's Directions concerning procedures in building cases.

The Chairperson has issued directions in relation to building matters. These can be viewed on the Tribunal's website under 'Home Building' or obtained from registries of the Consumer, Trader and Tenancy Tribunal. Chairperson's Directions are reviewed and updated regularly.

The Consumer, Trader and Tenancy Tribunal Bulletin is published by the Consumer, Trader and Tenancy Tribunal of New South Wales. Every effort is made to ensure that information in the Bulletin is accurate. The Consumer, Trader and Tenancy Tribunal Bulletin is intended to inform and it cannot be regarded as a substitute for legal advice. Copies are available on the website at www.cttt.nsw.gov.au and from the registries of the Consumer, Trader and Tenancy Tribunal.