

John McDonald Building Services Pty Ltd v Gusa [2022] NSWCATAP 60

FACTS

The matter of *John McDonald Building Services Pty Ltd v Gusa [2022] NSWCATAP 60* involved an appeal to the appeals panel of the NSW Civil and Administrative tribunal.

The dispute at first instance involved a dispute between home owners and a builder, in which the builder made several statements to the home owners, which caused them to accept removal of several elements from the scope of the contract on the understanding that if they did not do so, the agreement would be terminated or the contractual amount increased.

The tribunal at first instance decided for the home owners, finding that the statements amounted to misleading and deceptive conduct.

The builder appealed under s80(2)(b) of the *Civil and Administrative Tribunal Act 2013 (NSW)*, which allows an appeal without leave on questions of law.

The grounds of appeal raised were:

“1...Did the Tribunal deny the appellants procedural fairness by failing to consider a substantial and clearly articulated argument..?”

2... Whether in construing the contract...the Tribunal erred at law...

6... on the proper application of section 48MA of the Home Building Act [Rectification of defective work is preferred outcome in proceedings], should the Tribunal have made a works order under s.48O(c) of the Home Building Act instead of a money order”.

ISSUE

Whether the grounds of appeal involved questions of law?

FINDING

The tribunal affirmed the appeals panel’s prior decision of *Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69* in respect of questions of law in respect of appeals to the tribunal, stating:

“58. What constitutes a question of law for present purposes is well settled. In Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69, by reference to earlier authorities, the Appeal Panel provided a “non-exclusive” list of questions of law, which included, whether the Tribunal identified the wrong issue or asked the wrong question, whether a wrong principle of law was applied, whether there was a failure to afford procedural fairness, whether the Tribunal failed to have regard to a relevant consideration, or had regard to an irrelevant consideration, whether the Tribunal made a material error of fact, whether the decision is so unreasonable that no reasonable decision-maker would make it, and whether the Tribunal failed to provide adequate reasons for its decision.”

The decision was remitted for a further decision, with the appeals panel rejecting the ground 6 attack on the Tribunal’s discretion in respect of orders under *S48MA of the home builders act 1989 (NSW)*.

IMPACT

This decision confirms the grounds of appeal which constitute questions of law, particularly in respect of appeals made under s80(2)(b) of the *Civil and Administrative Tribunal Act 2013 (NSW)*.

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