

SUPREME COURT OF QUEENSLAND

CITATION: *Queensland Building & Construction Commission v Meredith*
[2014] QCA 62

PARTIES: **QUEENSLAND BUILDING & CONSTRUCTION
COMMISSION**
(applicant)
v
STEPHEN GRANT MEREDITH
(respondent)

FILE NO/S: Appeal No 5514 of 2013
QCAT No 141 of 2012

DIVISION: Court of Appeal

PROCEEDING: Application for Leave *Queensland Civil and Administrative
Tribunal Act*

ORIGINATING
COURT: Queensland Civil and Administrative Tribunal at Brisbane

DELIVERED ON: 1 April 2014

DELIVERED AT: Brisbane

HEARING DATE: 14 November 2013

JUDGES: Muir and Gotterson JJA and Applegarth J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application for leave to appeal refused.**

CATCHWORDS: PROCEDURE – INFERIOR COURTS – QUEENSLAND –
QUEENSLAND CIVIL AND ADMINISTRATIVE
TRIBUNAL – where the respondent was a director of two
building companies – where the respondent relied upon a co-
director to manage the financial matters – where both
companies went into voluntary administration and the
respondent entered into bankruptcy – where the respondent
became an excluded individual, pursuant to the *Queensland
Building Services Authority Act 1991* (Qld) – where the
applicant refused the respondent’s application for
categorisation as a permitted individual – where the
respondent sought review from QCAT – where the Tribunal
found in favour of the respondent and declared the
respondent a permitted individual – where the applicant
sought leave to appeal to the Appeal Tribunal of QCAT –
where leave was granted but the appeal dismissed – where in
this Court the applicant sought leave to appeal the decision of
the Appeal Tribunal of QCAT – whether the respondent took
all reasonable steps to avoid the coming into existence of the

circumstances leading to him being declared an excluded individual

Corporations Act 2001 (Cth), s 180

Queensland Building Services Authority Act 1991 (Qld), s 56AC, s 56AD, s 56AF, s 58, s 59, s 61

Queensland Building Services Authority Amendment Act 2013 (Qld), s 42

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 86, s 115, s 142, s 150

Queensland Building Services Authority v Meredith [2013] QCATA 152, related

Re Property Force Consultants Pty Ltd [1997] 1 Qd R 300; (1995) 13 ACLC 1051; [1995] QSC 102, cited

Underwood v Queensland Department of Communities (State of Queensland) [2013] 1 Qd R 252; [\[2012\] QCA 158](#), applied

COUNSEL: C Heyworth-Smith for the applicant
N M Cooke for the respondent

SOLICITORS: Robinson Locke Litigation Lawyers for the applicant
Streten Masons Lawyers for the respondent

- [1] **MUIR JA:** I agree with the reasons of Gotterson JA and with his proposed order.
- [2] **GOTTERSON JA:** By an application filed in this Court on 17 June 2013, the Queensland Building Services Authority (“QBSA”), applied for leave to appeal against a final decision of the Appeal Tribunal of the Queensland Civil and Administrative Tribunal (“QCAT”) delivered on 15 May 2013.¹ The Queensland Building and Construction Commission which since 1 December 2013 has replaced QBSA, was substituted for QBSA as applicant in these proceedings on that date pursuant to s 42 of the *Queensland Building Services Authority Amendment Act 2013*.
- [3] The Appeal Tribunal granted leave to QBSA to appeal to it against a decision of the Tribunal constituted by Dr Bridget Cullen but dismissed the appeal.²
- [4] The Tribunal decision under appeal on that occasion was delivered on 10 April 2012 in proceedings instituted in QCAT by the respondent to the application in this Court, Stephen Grant Meredith. The Tribunal set aside three decisions of QBSA dated 10 March 2011 whereby it refused applications by Mr Meredith made pursuant to the provisions of Part 3A (ss 56AB-56AH) of the *Queensland Building Services Authority Act 1991*³ (“the Act”) to be categorised as a permitted individual for three relevant events.⁴ The Tribunal also decided that Mr Meredith be categorised as a permitted individual for all three relevant events.

The relevant events and the application to QBSA

- [5] Mr Meredith is a builder. He had been a director of two companies, Miller Homes No 1 Pty Ltd and M & M Constructions Pty Ltd at a time when both companies

¹ AB1343-1346.

² AB1330.

³ Now titled the *Queensland Building and Construction Commission Act 1991*.

⁴ AB1295.

went into voluntary administration on 31 March 2009. It is common ground that in the case of each company, the appointment of the administrator was a relevant company event as defined in s 56AC(1)(a) of the Act. By letter dated 2 April 2009, QBSA notified Mr Meredith pursuant to s 56AF of the Act that it considered him to be an excluded individual for those relevant events.⁵

- [6] Later, on 30 September 2009, Mr Meredith entered into bankruptcy. It is also common ground that the bankruptcy was a relevant bankruptcy event as defined in s 56AC(2)(a) and (b). By letter dated 17 November 2009, QBSA notified Mr Meredith that it had become aware of a third relevant event for which he was an excluded person, namely, his bankruptcy.⁶
- [7] By virtue of the operation of ss 56AC(3) and (4) of the Act, Mr Meredith became an excluded individual for each of the relevant company events and the relevant bankruptcy event on the respective dates on which those events occurred; and by virtue of the operation of s 58(1) of the Act, he became a permanently excluded individual having twice become an excluded individual for a relevant event. A permanently excluded individual may not be granted a contractor's licence or nominee supervisor's licence or be a director, secretary or influential person for a company holding a contractor's licence.⁷ The status of permanent exclusion is of indefinite duration. It does not expire upon effluxion of time.
- [8] Section 56AD of the Act permitted a person who has been advised by QBSA that it considers them to be an excluded individual for a relevant event, to be categorised by QBSA as a permitted individual. Upon categorisation as a permitted individual, the person is taken not to be an excluded individual for the relevant event.⁸ More specifically to Mr Meredith's circumstances, a relevant event is not to be counted in determining whether an individual continues to be a permanently excluded individual if QBSA's decision to refuse an application for categorisation as a permitted individual is reversed by QCAT.⁹
- [9] In 2009, Mr Meredith applied for categorisation as a permitted individual in respect of the relevant company events and the relevant bankruptcy event. At the same time, he commenced proceedings in QCAT challenging the notifications to him that he was an excluded individual for those respective events. His challenge ultimately failed.¹⁰ Thereupon, his applications for categorisation as a permitted individual were actively pursued.¹¹ Each application was refused, notification of refusal being given to Mr Meredith by QBSA by letter dated 10 March 2011.¹² A Statement of Reasons document dated 18 May 2011 was duly given to Mr Meredith for each refusal decision.¹³

The “all reasonable steps to avoid” requirement

- [10] Section 56AD(8) of the Act regulated exercise by QBSA of the power to categorise an individual as a permitted individual in the following way:

⁵ AB816-818; 819-821.

⁶ AB658-660.

⁷ Section 59.

⁸ Section 56AD(9).

⁹ Section 61(a).

¹⁰ Decision delivered on 16 September 2010; AB662.

¹¹ AB653.

¹² AB1219; AB1236; AB1251.

¹³ AB1218-1235; AB1236-1250; AB1251-1265.

“The authority may categorise the individual as a permitted individual for the relevant event only if the authority is satisfied, on the basis of the application, that the individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.”

- [11] The scope of matters to be taken into account in considering all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event, was further regulated by ss 56AD(8A) and (8B) as follows:

“(8A) In deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event, the authority must have regard to action taken by the individual in relation to the following-

- (a) keeping proper books of account and financial records;
- (b) seeking appropriate financial or legal advice before entering into financial or business arrangements or conducting business;
- (c) reporting fraud or theft to the police;
- (d) ensuring guarantees provided were covered by sufficient assets to cover the liability under the guarantees;
- (e) putting in place appropriate credit management for amounts owing and taking reasonable steps for recovery of the amounts;
- (f) making appropriate provision for Commonwealth and State taxation debts.

(8B) Nothing in subsection (8A) prevents the authority from having regard to other matters for deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event.”

- [12] QBSA refused Mr Meredith’s applications for categorisation as a permitted individual because it was not satisfied that he had taken all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of each of the relevant events.

The Tribunal’s decision

- [13] Mr Meredith sought a review of the refusal decisions pursuant to s 86(1)(j) of the *Queensland Civil and Administrative Tribunal Act 2009* (“the QCAT Act”). The review was conducted on the footing of an Agreed Statement dated 4 October 2011 that dealt with both facts and the issue for determination by the Tribunal.¹⁴ This Agreement was made against a background of uncontentious historical fact, features of which are set out in the following paragraphs.

- [14] Mr Meredith was born in 1978. He left school after finishing Year 10. He had obtained trade qualifications as a carpenter after completing an apprenticeship.

¹⁴ AB1141.

Through his involvement in lifesaving, he met Steven Miller, who, at times, was president of the lifesaving club to which Mr Meredith belonged. Mr Miller was a builder. He carried on business then as “Miller Homes”. Mr Meredith undertook his apprenticeship with him. Mr Miller also sponsored Mr Meredith’s attendance at surf club events and offered him flexible working hours for that purpose.

- [15] After completing his apprenticeship, Mr Meredith subcontracted for Miller Homes. He was always paid promptly. After about two years, he became the supervisor nominee for Miller Homes Pty Ltd. In June 2006 Mr Miller offered Mr Meredith the role of co-director of, and a 20 per cent shareholding in, two home construction companies which had been recently established by Mr Miller. They were Miller No 1 Pty Ltd and M & M Constructions Pty Ltd.
- [16] Mr Meredith participated in the affairs of these companies as the person responsible for getting the houses built. Mr Miller attended to financial matters. Conversations between Mr Meredith and Mr Miller about such matters were at a general level. Mr Meredith did not seek out financial information or verification of what he had been told. He trusted in Mr Miller’s financial knowledge and competence and relied upon assurances by him that financial matters were “all under control”.
- [17] In fact, Mr Miller engineered substantial related-party loan transactions by which funds were stripped from the two companies to other companies in which he, but not Mr Meredith, were financially interested. Approximately \$2.5 million was stripped this way. Mr Meredith knew nothing of these loan transactions at the time. They caused serious liquidity difficulties for the two companies, starving them of working capital and precipitating insolvency. Mr Miller told Mr Meredith of the dire financial position of the companies in late March 2009, a few days before their voluntary administration. Mr Meredith immediately resigned as a director of the companies.
- [18] The Agreed Statement recorded the parties’ agreement that:
- “1. The relevant event is the appointment of administrators to M&M Constructions Pty Ltd and Miller Homes No 1 Pty Ltd and Mr Meredith’s bankruptcy.
 2. The reasons for the failure of the companies were:
 - 2.1. The lack of up-to-date reliable information which would enable the companies to identify the warning signs of insolvency and take remedial action.
 - 2.2. Lack of working capital.
 - 2.3. Stripping of funds to related entities by Miller.
 3. It is agreed that the bankruptcy was a consequence of the companies’ failure.
 4. The issue in contention is whether it was reasonable for Mr Meredith to not be personally involved in the financial management of the company.
 5. Steps that may have been taken include:
 - 5.1. Obtaining legal and financial advice from independent sources.

- 5.2. Acting upon claims, letters of demand and other notifications received that the creditor's terms were not being complied with.
- 5.3. Personally reviewing the financial records of the company.
- 5.4. Insisting on financial reports and reviewing the reports.
- 5.5. Ensuring any loan agreements were formalised in writing.
- 5.6. Taking steps to reasonably inform himself of his obligations (sic) as a director and to understand his role and duties as a director."¹⁵

- [19] The steps referred to in paragraph 5 of the document are to be seen as ones that, it was agreed, were open to Mr Meredith to take to avoid the coming into existence of the circumstances that resulted in the corporate insolvencies and his own bankruptcy. That is to say, there were no legal or physical restraints upon his taking any of those steps. The parties joined issue on whether it was reasonable for Mr Meredith not to be personally involved in the financial management of the companies by taking steps such as those listed in paragraph 5.¹⁶
- [20] The Tribunal resolved that issue in favour of Mr Meredith. Dr Cullen found that in all the circumstances put before her, Mr Meredith "was entitled to rely upon the judgement and advice of Mr Miller without verification that Mr Miller's advice was correct."¹⁷ Having made this finding, the Tribunal then exercised the power under s 56AD to categorise Mr Meredith as a permitted individual for all three relevant events.

The Appeal Tribunal's decision

- [21] QBSA applied for leave pursuant to s 142(3) of the QCAT Act to appeal to the Appeal Tribunal against the Tribunal's decision. Leave was required because the five grounds of appeal proposed included questions of fact and questions of mixed law and fact.¹⁸ Interlinked questions of mixed law and fact were raised by Grounds 1, 2 and 5 which contended that the Tribunal had erred in failing to consider properly whether Mr Meredith had taken all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant events and in finding that he could satisfy the test in s 56AD(8) in circumstances where he had not personally attended to any of the matters listed in s 56AD(8A) and had not seen, or asked to see or be provided with, a copy of the financial accounts or statements of the companies.
- [22] The application for leave and the substantive appeal were heard together by an appeal tribunal constituted by Mr C Brabazon QC as Presiding Member and Ms M Howard, Member. Both agreed that leave to appeal should be granted. Mr Brabazon rejected all five grounds of appeal. He concluded that the appeal should be dismissed. Ms Howard found in favour of QBSA on the grounds which raised the questions of mixed law and fact to which I have referred. She would have allowed the appeal. By virtue of s 115(1) of the QCAT Act, the decision of the Appeal Tribunal was that of the Presiding Member.

¹⁵ AB1141.

¹⁶ Tr1-5 LL1-24.

¹⁷ Reasons [35]; AB1304.

¹⁸ AB1310.

The application for leave to appeal to this Court

- [23] Section 150(3) of the QCAT Act permits an appeal to this Court against a final decision of the Appeal Tribunal only on a question of law and only if the party who wishes to appeal has obtained leave to appeal from this Court. The very structure of this provision forcefully implies, first, that leave to appeal may be given only with respect to a question or questions of law and, secondly, that in considering the exercise of the discretion to grant leave to appeal, this Court will have high regard for the prospects of success that the applicant for leave has of demonstrating error on the part of the Appeal Tribunal with respect to the question or questions of law concerned. There must be reasonable prospects of success to warrant a grant of leave.¹⁹
- [24] The application for leave to appeal was supported by an affidavit to which is exhibited a proposed notice of appeal.²⁰ This document lists five grounds of appeal, each one of which addresses aspects of the reasons of the Presiding Member. To some extent, these grounds are interrelated, overlap and are repetitive. At the hearing of this application, counsel for QBSA indicated an intention “to focus upon three particular matters that arise out of these grounds”. In oral argument, those three matters were developed as ones that encapsulate the errors of law which QBSA contends were made by the Presiding Member. It is therefore both appropriate and convenient to consider this application for leave by reference to those three matters.

1: Relevance of conduct of Mr Miller

- [25] The Presiding Member observed that, “As it is necessary to consider what a reasonable builder, in Mr Meredith’s shoes, might have done, it is necessary to take into account Miller’s role in the companies’ operations”.²¹ He then referred to factual aspects of the strong personal and then business relationships between Mr Meredith and Mr Miller, including the latter’s affidavit evidence of the trust that Mr Meredith had placed in him, that Mr Meredith had trusted him as a “father figure” and that he had not informed Mr Meredith of the related-party transactions.²²
- [26] The Presiding Member then reasoned as follows:
- “It is necessary to turn to The QBSA’s five separate grounds of appeal.
- First, it is submitted that the member failed to properly consider whether or not Mr Meredith took all reasonable steps to avoid the circumstances that resulted in the failure of the two companies.
- It is admitted that Mr Meredith took no such steps. Why was that? His focus was on the house building work, which was the foundation of the companies’ success. He was good at that work. He left the financial details to Mr Miller and the office staff.
- He held two certificates – Business Management for Trade Contractors and Certificate IV Building. These qualifications included management modules. It does appear that Mr Meredith, in

¹⁹ *Underwood v Queensland Department of Communities (State of Queensland)* [2012] QCA 158 at [18] and [68].

²⁰ Exhibit “MR5” to the affidavit of M J Robinson sworn 17 June 2013; AB1373-1376.

²¹ Reasons [13]; AB1334.

²² Reasons [14]-[18]; AB1334-1335.

any case, chose to leave the financial details of the companies to others – especially Miller. It must be accepted, that he made no attempt to get involved in, or understand in detail, the financial affairs of the companies.

Miller regularly responded to his question about the companies' financial affairs, to the effect that, "they were under control". In fact, they were not under control, as they edged towards the eventual winding up.

Miller was responsible for a state of affairs that he deliberately withheld from Mr Meredith. There were large unauthorised loans from the companies to him. He forged Mr Meredith's signature on a significant document, which overstated the company's assets.

The Member was right, to consider the decided cases about a director's reliance on other directors, or company financial officers. Reference may also be made to the Queensland decision of *Re Property Force Consultants Pty Ltd* (1995) 13 ACLC 1051. It was held that a director was justified in placing reliance upon another director who subsequently committed fraud, given that they had worked together without any suspicion of dishonesty, and there was, otherwise, no reason for suspicion. See, generally, Ford's "Principles of Corporation Law, 14th ed. Pp 451-455.

In the overall result, the Member's decision should be accepted, that Mr Meredith did take "all reasonable steps" to avoid the circumstances that overwhelmed the companies. In particular, the member's conclusion, that pressing Mr Miller for more information would have resulted in a lying response, or false accounts, was not a fanciful one. Miller's own affidavit says that he deliberately withheld financial information from Mr Meredith."²³

(The admission referred to by the Presiding Member in paragraph 21 of the reasons is properly understood to be an admission on the part of Mr Meredith that he did not personally take any active steps to avoid the circumstances that resulted in the failure of the two companies.)

- [27] As this matter was developed in oral argument, QBSA submitted that the Presiding Member's reasoning was flawed by errors of law in the construction of ss 56AD(8) and (8A). Two errors which to some extent are interlinked, were proposed. Both are related to the fact that Mr Meredith relied on Mr Miller with respect to the financial affairs of the company and independently of his reliance, did not do anything actively to enquire into those affairs.
- [28] Firstly, it was submitted that as s 56AD(8) is focused upon the conduct of the individual applicant for categorisation, the actions of that individual need be examined. It was submitted that two consequences flow from that. One is that if an individual has taken no action personally to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event, then that individual can never satisfy QBSA under the section.²⁴ The other, an allied submission, is that regard may be had to the conduct of another person only to the

²³ AB1335-1336.

²⁴ Tr1-3 LL10-14.

extent that it might shed light upon the reasonableness of the action personally undertaken by the individual to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.²⁵ The Presiding Member erred in having regard to the conduct of Mr Miller when Mr Meredith himself had not personally involved himself in the management of the financial affairs of the companies.

- [29] Secondly, it was submitted that insofar as any of the activities listed in (a) to (f) of s 56AD(8A) may have been applicable to the relevant events, unless the individual had personally taken active steps with respect to them, it was not open to QBSA to be satisfied that that individual had taken all reasonable steps for the purpose of s 56AD(8).²⁶ The Presiding Member therefore also erred in proceeding on the footing that it was open for QBSA to be satisfied for the purpose of s 56AD(8) in circumstances where Mr Meredith had not personally undertaken any of the activities listed in s 56AD(8A) that might have been applicable to the relevant events.
- [30] I am unable to accept that, as a matter of law, it was not open to the Presiding Member to have regard to the conduct of Mr Miller in the way that he did. The evidence was not that Mr Meredith had done nothing at all with respect to the financial affairs of the company. He had done something in that he had placed full trust in Mr Miller with respect to them. In such circumstances, the question for consideration is whether in so doing, he acted reasonably. That is a question which is legitimately addressed by reference to the factual basis of his trust in Mr Miller including Mr Miller's conduct in engendering that trust. Necessarily, that enquiry would also have regard to the knowledge and acumen they respectively had for financial affairs.
- [31] At a general level, I would reject the proposition that, as a matter of law, an individual who has placed full reliance upon another with respect to the financial affairs of a company may never satisfy the "all reasonable steps" test prescribed in s 56AD(8). Such a proposition implies that the expression "took all reasonable steps" is to be read as precluding action by way of placing full reliance upon another. There is no justification in the text of the section for such an implication. Moreover, it is logically flawed because whether action of that kind was reasonable must depend upon a consideration of relevant circumstances.
- [32] As to the second alleged error of law, it must be said at once that the activities list in s 56AD(8A) are ones for which regard must be had in terms of action taken by the individual in relation to them. It does not at all follow that because an individual has not personally participated actively in relation to those that are applicable, then, as a matter of law, that individual cannot satisfy the test in s 56AD(8). Neither section so provides expressly or impliedly. The true position is that, if having regard to any one of those activities QBSA determines that an applicant had not personally participated actively with respect to it but had placed full reliance upon another with respect to it, the issue raised by s 56AD(8) would be whether, in the relevant circumstances, such reliance was reasonable.
- [33] For these reasons, I am of the view that in the course of addressing the first matter, QBSA has not identified an arguable error of law on the part of the Presiding Member with respect to the construction of ss 56AD(8) or (8A).

²⁵ Tr1-7 LL28-32.

²⁶ Tr1-3 LL40-44.

2: Reference to directors' duties under the law relating to corporations

- [34] Counsel for QBSA submitted that the Presiding Member had erred in law by acting on a footing that where reliance by an applicant director of a company upon a co-director or a financial officer in relation to the financial affairs of a company was sufficient to discharge their duties as a director of a company according to the laws relating to corporations, then it was sufficient also to satisfy the “all reasonable steps” test in s 56AD(8). Specific reference was made to s 180 of the *Corporations Act 2001* in this context.²⁷ An elaboration of the submission is that having so erred, the Presiding Member erred further by failing to address, one by one, what Mr Meredith had done personally in relation to the activities listed in (a) to (f) of s 56AD(8A), or such of them as were applicable.²⁸
- [35] As to the first of these alleged errors, the reasons of the Presiding Member suggest that he did not proceed on the footing for which the submission contends. In particular, paragraph 25 thereof clearly indicates that he regarded corporations law concepts concerning reliance on a co-director or a financial officer as relevant to, but not conclusive of, whether all reasonable steps had been taken by a director applicant. Therefore, there was no error as alleged. Besides, I can find no fault in having regard to such concepts in this context. Section 56AD(8B) leaves it open to have regard to them in considering the test in s 56AD(8).
- [36] Turning to the second of the alleged errors, it is true that the Presiding Member did not address, one by one, some or all of the activities listed in (a) to (f) of s 56AD(8A). That he did not do so is readily explained by two circumstances. Firstly, Mr Meredith admitted before the Tribunal and the Appeal Tribunal that he did not personally undertake any of the activities listed in the section. The Presiding Member noted that at paragraph 10 of the reasons. Secondly, the issue in contention was framed by the parties as being “whether it was reasonable for Mr Meredith not to be personally involved in the financial management” of the companies. That may be seen clearly from paragraph 4 of the Agreed Statement.
- [37] It is obvious that the Presiding Member did take into account that Mr Meredith had not personally undertaken any of the listed activities. He did so in the course of deciding the issue in contention as the parties had framed. I am therefore quite unpersuaded that the Presiding Member erred in the way he had regard to the activities listed in (a) to (f) of s 56AD(8A).

3: Reasoning by inference

- [38] This matter arises from paragraph 26 in the reasons of the Appeal Tribunal. There, the Presiding Member observed that the conclusion of the Tribunal that pressing Mr Miller for more information would have resulted in a lying response, was not a fanciful one. He noted, as was the case, that Mr Miller had said in his own affidavit that he deliberately withheld financial information about the companies from Mr Meredith.²⁹ It may be fairly inferred that the Presiding Member adopted this conclusion in his reasoning.
- [39] Ground 4 in the proposed notice of appeal is apparently based on this aspect of the reasons. It is as follows:

²⁷ Tr1-17 LL16-20.

²⁸ Tr1-19 LL22-28.

²⁹ Affidavit S N Miller p 7; AB1696.

“The learned presiding member erred in law by finding that an inference was available to be drawn from evidence that a director of a company had responded incorrectly to general enquiries as to how the business of the company was going that the same director would have falsified accounts if asked to provide the same to the Respondent.”³⁰

- [40] As articulated in this ground of appeal, the evidence from which the inference of a deliberate false response to a request for financial information was drawn was that Mr Miller had “responded incorrectly” to general enquiries. That is an understatement of the relevant evidence. The particular evidence to which the Presiding Member referred was of deliberate withholding of information, not merely the provision of the incorrect information unqualified as to whether it was known by the provider (Mr Miller) to have been incorrect or not.
- [41] When allowance is made for the understatement, the submission with respect to the availability of the inference as to a deliberately false response falls away. I consider that the deliberate withholding of the financial information leads to an inference that, if pressed, the withholder would, or would be likely to, provide information that was deliberately false in order to conceal the very information that it had been sought to conceal by the withholding. In my view, the drawing of such an inference discloses neither an error of law nor an error of fact.

Disposition

- [42] In summary, none of the matters addressed by counsel for QBSA in summarising the proposed grounds of appeal reveals an arguable error of law on the part of the Presiding Member. This factor weighs tellingly against the grant of leave to appeal.

Orders

- [43] I would therefore propose the following orders:
1. Application for leave to appeal refused.
- [44] **APPLEGARTH J:** I agree with the reasons of Gotterson JA and with the order proposed by his Honour.

³⁰ AB1374.