

# SUPREME COURT OF QUEENSLAND

CITATION: *Commonwealth Bank of Australia v Seymour* [2017] QSC 221

PARTIES: **COMMONWEALTH BANK OF AUSTRALIA**  
(applicant)  
v  
**IAN JEFFREY SEYMOUR**  
(defendant)

FILE NO/S: SC No 9235 of 2015

DIVISION: Trial Division

PROCEEDING: Application for leave to enforce default judgment

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 10 August 2017

DELIVERED AT: Brisbane

HEARING DATE: 2 August 2017 (heard on the papers)

JUDGE: Holmes CJ

ORDER: **1. The Plaintiff be granted leave pursuant to rule 913(2) of the *Uniform Civil Procedure Rules 1999 (Qld)* to issue an enforcement warrant for possession of land in respect of the land described as Lot 1 on Registered Plan 198386, Title Reference 16677149, being the land situated at 2009-2015 Mt Cotton Road, Cornubia in the State of Queensland (Property); and**  
**2. The Defendant pay the Plaintiff's costs of and incidental to this application.**

CATCHWORDS: UNIFORM CIVIL PROCEDURE RULES – judgments and orders – enforcement of judgments and orders – execution against property – where the plaintiff obtained default judgment against the defendant – where the plaintiff seeks leave on the papers for the issue of an enforcement warrant for recovery of possession of land – where the occupants of the property have previously been served with a notice to vacate and have been served with the present application, affidavit and submissions – whether leave should be granted to issue the enforcement warrant

SOLICITORS: Gadens Lawyers for the applicant plaintiff

[1] **HOLMES CJ:** The applicant seeks leave to enforce a default judgment it obtained on 16 March 2017 for recovery of possession of land situated at 2009-2015 Mt Cotton Road, Cornubia. The material filed in support of the application for default judgment shows that the plaintiff was entitled to possession of the property under the terms of a mortgage, the defendant borrower, Mr Seymour, having fallen into default.

[2] It seems that the applicant seeks leave because on a number of occasions when process servers have gone to the property, an older woman whom they have been able to establish is the defendant's mother has been present. Rule 913(2) of the *Uniform Civil Procedure Rules 1999* provides:

*“If a person other than the person against whom an order for possession is made is in occupation of the land under a lease or tenancy agreement an enforcement warrant may be issued only with leave.”*

[3] It is not at all clear why it is supposed that the lady in question resides at the property pursuant to a lease or tenancy agreement, rather than simply living with her son in his house. However, it may have been thought that caution in proceeding was to be preferred. Section 317 of the *Residential Tenancies and Rooming Accommodation Act 2008* requires two month's notice to be given before a mortgagee can obtain possession of tenanted premises. In September 2015, the plaintiff's solicitors delivered a notice under that provision to the property, addressed to “The Occupant(s)”, requiring that the property be vacated. A further letter was sent to “The Occupant(s)/The Tenant”, again requiring that the property be vacated. The solicitors have since served both the defendant and “The Occupant(s)/The Tenant” of the property with a copy of this application, the supporting affidavit and submissions as well as a letter enclosing those documents and advising that “The Occupant(s)/The Tenant” seek independent legal advice if necessary.

[4] As I have said, there is no clear evidence about the status of the woman living at the property, but should she in fact be in residence pursuant to a tenancy or lease agreement, I am satisfied that she has both received notice to vacate and been served with a copy of the present application, affidavit and submissions. The defendant has also received adequate notice of this application.

[5] I propose, accordingly, to make the order sought, for the grant of leave to issue an enforcement warrant. While I will order that the defendant pay the plaintiff's costs of and incidental to the application on the standard basis, I do not propose to make any order against an unnamed “Respondent/Occupant” of the property. I will amend the draft provided accordingly. The order then is:

1. The Plaintiff be granted leave pursuant to rule 913(2) of the *Uniform Civil Procedure Rules 1999* (Qld) to issue an enforcement warrant for possession of land in respect of the land described as Lot 1 on Registered Plan 198386, Title Reference 16677149, being the land situated at 2009-2015 Mt Cotton Road, Cornubia in the State of Queensland (**Property**); and

2. The Defendant pay the Plaintiff's costs of and incidental to this application.