

SUPREME COURT OF QUEENSLAND

CITATION: *Anderson v Langdon & Anor* [2018] QCA 297

PARTIES: **STEPHEN JOHN ANDERSON**
(applicant)
v
SCOTT DAVID HARRY LANGDON AND JARROD LEE VILLANI as joint and several liquidators of ONECASH LIMITED ACN 161 241 612 (IN LIQUIDATION)
(first respondent)
ONECASH LIMITED ACN 161 241 612 (IN LIQUIDATION) AND DSM CONNECT PTY LIMITED ACN 147 812 235 (IN LIQUIDATION)
(second respondent)

FILE NO/S: Appeal No 2384 of 2018
DC No 1207 of 2017

DIVISION: Court of Appeal

PROCEEDING: Application for leave s 118 DCA (Civil)

ORIGINATING COURT: District Court at Brisbane – Unreported, 16 November 2017 (Reid DCJ)

DELIVERED ON: 30 October 2018

DELIVERED AT: Brisbane

HEARING DATE: 15 May 2018

JUDGES: Gotterson and Philippides JJA and Burns J

ORDERS: **1. Grant the application for leave to appeal.**
2. Appeal allowed.
3. Set aside the order of 16 November 2017 and in lieu order that:
(a) Judgment be entered for the respondents for the sum of \$83,824.75.
(b) Within seven days of the publication of these reasons the parties file written submissions, not to exceed two pages, as to the rate at which interest on the said sum of \$83,824.75 should be ordered pursuant to s 58 of the *Civil Proceedings Act 2011* (Qld) and the period for which it should be ordered.
(c) The application for summary judgment is otherwise dismissed.

(d) The appellant pay the respondents' costs of and incidental to the summary judgment on the standard basis.

(e) The respondents pay the applicant's costs of the application for leave and of the appeal on the standard basis.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – EXCESSIVE OR INADEQUATE DAMAGES – GENERAL PRINCIPLES – CIRCUMSTANCES JUSTIFYING INTERFERENCE BY APPELLATE COURT – where the primary judge awarded summary judgment against the applicant for \$117,824.75 paid to the applicant between 6 March 2012 and 14 April 2015 as unreasonable director related transactions pursuant to the *Corporations Act 2001* (Cth) – where in relation to the payments of \$34,000 the applicant was not a director of a relevant company – whether there is an arguable case as to the balance of the claim against the applicant

Corporations Act 2001 (Cth), s 588FDA, s 588FF
Uniform Civil Procedure Rules 1999 (Qld), r 292(2)(a)

COUNSEL: M Taylor for the applicant
F Chen for the respondent

SOLICITORS: Irish Bentley Lawyers for the applicant
Dentons for the respondent

- [1] **GOTTERSON JA:** I agree with the orders proposed by Philippides JA and with the reasons given by her Honour.
- [2] **PHILIPPIDES JA:** The applicant, Mr Anderson, seeks leave, pursuant to s 118(3) of the *District Court of Queensland Act 1967* (Qld), to appeal against an order by Reid DCJ made on 16 November 2017 awarding summary judgment against him on part of a claim brought in a District Court proceeding by Mr Langdon and Mr Villani (in their capacity as liquidators of Onecash Limited (Onecash) and DSM Connect Pty Ltd (DSM)) and the companies in liquidation alleging voidable transactions pursuant to the *Corporations Act 2001* (Cth) (the Act). As the quantum of the order made against the applicant is in the Magistrate's Court jurisdiction, the applicant requires leave to appeal. He also seeks an extension of time in which to appeal. The respondents do not oppose the granting of such leave.
- [3] The claim brought by the respondents against the applicant particularised 16 payments totalling \$161,861.75 alleged to have been made by DSM to the applicant in the period between 6 March 2012 and 14 April 2015. The payments were alleged to be unreasonable director related transactions constituting voidable transactions for which relief was claimed pursuant to s 588FDA and s 588FF of the Act. An alternative claim was made against the applicant for monies that had been received on the basis that the applicant had failed to provide consideration for the payments.

- [4] The impugned transactions concerned payments made into two separate accounts of the applicant particularised in the Statement of Claim as follows:
- (a) a total of \$141,861.75 was paid into one account comprising 14 payments (para 19(a) of the Statement of Claim); and
 - (b) \$20,000, made up of two payments of \$10,000, was paid into the other account (para 19(b) of the Statement of Claim).
- [5] At the hearing of the summary judgment application, the applicant was self-represented. He was given leave to file an amended defence and affidavit material opposing summary judgment. Exhibited to the applicant's affidavit was documentation in support of the contentions in the amended defence and affidavit disputing that the following transactions were voidable:
- \$16,337 made on 13 March 2012 (alleged in para (a)(ii) of the amended defence to concern reimbursement for the purchase of a company vehicle);
 - \$5,700 made on 4 August 2012 (alleged in (a)(vi) of the amended defence to concern reimbursement for the purchase of office furniture);
 - \$10,000 made on 14 November 2013 (alleged in para (a)(vii) of the amended defence to concern a payment made in error); and
 - \$12,000 made on 21 February 2013 (alleged in para (a)(ix) of the amended defence to concern reimbursement for the purchase of a company vehicle).
- [6] Before the primary judge, the respondents conceded that the applicant had demonstrated that triable issues had been raised as to these four transactions which totalled \$44,037.
- [7] As is evident from the primary judge's reasons, his Honour accepted the following facts pleaded in the Statement of Claim:
- (a) that between 6 March 2012 and 14 April 2015, Onecash and DSM paid the applicant the sum of \$161,861.75;
 - (b) that such payments occurred during the four year period ending 14 June 2015, the day on which the liquidators were appointed as joint and several administrators of Onecash and DSM;
 - (c) that the applicant was, at all times, a duly appointed director of Onecash and DSM and/or acted in the position of the director at the time of such payments; and
 - (d) that triable issues had been raised as to the claim for \$44,037 of the sum of \$161,861.75.
- [8] His Honour concluded that the balance of the payments, comprising the sum of \$117,824.75, were unsupported by consideration or benefit for the companies and that a reasonable person in the companies' circumstances would not have made the transactions. His Honour thus found that the payments constituting that sum were unreasonable director related transactions within s 588FDA of the Act and voidable as such. Accordingly, his Honour awarded summary judgment in the amount of \$117,824.75 with interest of \$3,979.73 and dismissed the application in respect of the balance of the claim of \$44,037.

The application for leave

- [9] The application for leave is made on the basis that grounds (a), (b) and (f) of the draft Notice of Appeal are abandoned. The primary grounds sought to be pursued are grounds (c) and (d). Ground (c) alleges an error of law in granting summary judgment on the allegations pleaded in paras 37 to 41 of the Statement of Claim where they do not establish a cause of action against the applicant. Ground (d) alleges an error of law in granting relief pursuant to s 588FF(1) of the Act. Ground (e) is pressed in the alternative (with ground (b) now constituting part of that ground). That ground alleges error in finding that the respondents had discharged the evidentiary burden under r 292(2)(a) of the *Uniform Civil Procedure Rules 1999* (Qld) (the UCPR).

Consideration

- [10] Ground (d) concerns the contention that the primary judge erred in law in granting relief pursuant to s 588FF(1) of the Act, on the basis that payments totalling \$117,824.75 constituted unreasonable director related transactions within the meaning of s 588FDA of the Act.
- [11] It is apparent, notwithstanding that it was alleged that the unreasonable director related transactions included payments between 6 March and 11 December 2012, that the Statement of Claim (by para 2(b)) only alleged the applicant to have been a director of DSM following his appointment on 1 September 2013. That was also the position revealed by the affidavit of Mr Villani filed 24 October 2017.¹
- [12] In those circumstances, the respondent, unsurprisingly, conceded that the applicant was not a director of DSM at the time when five of the payments comprised in the total payments of \$117,824.75 were made. Those five transactions concerned the following payments totalling \$34,000:
- \$5,000 made on 6 March 2012 (para 19(a)(i) of the Statement of Claim);
 - \$5,000 made on 3 July 2012 (para 19(a)(iii) of the Statement of Claim);
 - \$5,000 made on 10 July 2012 (para 19(a)(iv) of the Statement of Claim);
 - \$9,000 made on 23 July 2012 (para 19(a)(v) of the Statement of Claim); and
 - \$10,000 made on 11 December 2012 (para 19(b)(i) of the Statement of Claim).
- [13] The respondents contended that, while the primary judge erred in finding that those transactions were unreasonable director related transactions in respect of DSM, the balance of the judgment should not be disturbed on appeal, since it comprised unreasonable director related transactions that were not attended by the error. In that regard, the respondents argued that the applicant had been given a fair hearing and had been given ample opportunity to file a proper defence and affidavit evidence opposing the summary judgment application, which had previously been adjourned. The balance comprised the sum of \$83,824.75 as follows:
- \$5,024.75 on 15 November 2013 (para 19(a)(viii) of the Statement of Claim);
 - \$10,000 on 16 March 2014 (para 19(b)(ii) of the Statement of Claim);
 - \$5,000 on 27 April 2014 (para 19(a)(x) of the Statement of Claim);
 - \$25,000 on 27 April 2014 (para 19(a)(xi) of the Statement of Claim);

¹ Exhibit JV-02 p 25, AB at 53.

- \$10,800 on 14 May 2014 (para 19(a)(xii) of the Statement of Claim);
 - \$10,000 on 19 October 2014 (para 19(a)(xiii) of the Statement of Claim); and
 - \$18,000 on 14 April 2015 (para 19(a)(xiv) of the Statement of Claim).
- [14] Given the error in law, the making of the order and the resulting substantial injustice, leave to appeal ought to be granted and it is appropriate to re-exercise the discretion.
- [15] The error of law made by the primary judge concerned only the period during which the applicant was a director such that the payments to him could not be impugned as director related transactions. The complaint by the applicant that that error reflected generally on the material as a whole, such that the respondents had failed to discharge the evidentiary burden that lies with them on a summary judgment application is not made out. The primary point made in support of the application for summary judgment was that, in respect of the impugned payments, there was no documentary evidence as to the nature of the payments being properly a company expense. The applicant is still in no better position than he was at first instance.
- [16] The applicant's affidavit material before the primary judge only put into evidence documentation concerning four transactions which totalled \$44,037, in respect of which summary judgment was not given. There is no basis to conclude, in the absence of material to support the mere assertions made by the applicant, that there are any issues concerning the transactions comprising the sum of \$83,824.75 that require a hearing.
- [17] As to ground (c), paras 37 to 41 of the Statement of Claim alleged that the applicant failed to provide consideration to the companies for the payments made to him. The respondents accepted that the primary judge did not rely upon the alternate claim that the monies were had and received and it is therefore not necessary to consider it in this appeal.

Orders

- [18] I would make the following orders:
1. Grant the application for leave to appeal.
 2. Appeal allowed.
 3. Set aside the order of 16 November 2017 and in lieu order that:
 - (a) Judgment be entered for the respondents for the sum of \$83,824.75.
 - (b) Within seven days of the publication of these reasons the parties file written submissions, not to exceed two pages, as to the rate at which interest on the said sum of \$83,824.75 should be ordered pursuant to s 58 of the *Civil Proceedings Act* 2011 (Qld) and the period for which it should be ordered.
 - (c) The application for summary judgment is otherwise dismissed.
 - (d) The appellant pay the respondents' costs of and incidental to the summary judgment on the standard basis.

- (e) The respondents pay the applicant's costs of the application for leave and of the appeal on the standard basis.

[19] **BURNS J:** I agree.