

SUPREME COURT OF QUEENSLAND

CITATION: *United Petroleum Pty Ltd v Sargent* [2019] QCA 295

PARTIES: **UNITED PETROLEUM PTY LTD**
ACN 085 779 255
(applicant)
v
CAMERON JAMES SARGENT
(respondent)

FILE NO/S: CA No 188 of 2019
DC No 4392 of 2018

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Criminal)

ORIGINATING COURT: District Court at Brisbane – [2019] QDC 93 (Jarro DCJ)

DELIVERED ON: 13 December 2019

DELIVERED AT: Brisbane

HEARING DATE: 18 September 2019

JUDGES: Sofronoff P and Philippides JA and Boddice J

ORDER: **Application refused with costs to be assessed or agreed.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN NO APPEAL LIES – where the applicant was charged with four offences under the *Environmental Protection Act 1994* (Qld) – where the applicant applied to the Magistrates Court for a stay of proceedings – where the applicant submitted that the real complainant was the Department of Environment and Heritage Protection, not the respondent, and therefore the prosecution was commenced out of time – where the Magistrate dismissed the stay application – where the applicant appealed to the District Court pursuant to s 222 of the *Justices Act 1886* (Qld) – where the learned judge on appeal at first instance dismissed the appeal – where the applicant seeks leave to appeal to the Court of Appeal – whether the prosecution was commenced out of time because the real complainant was the Department – whether the order of the Magistrates’ Court to refuse an application for a stay is amenable to appeal under s 222 of the *Justices Act*

Justices Act 1886 (Qld), s 222

Cross Country Realty Pty Ltd v Peebles [2007] 2 Qd R 254; [\[2006\] QCA 501](#), cited

Schneider v Curtis [1967] Qd R 300, followed

COUNSEL: M D Wyles QC, with B J Murphy, for the applicant
B J Power for the respondent

SOLICITORS: K & L Gates for the applicant
Department of Environment and Science (Legal) for the respondent

- [1] **SOFRONOFF P:** A complaint and summons was issued on 23 October 2014 charging the applicant with four offences as follows:
- (a) Unlawfully causing material environmental harm between 26 July 2013 and 8 August 2013 contrary to s 438(2) of the *Environmental Protection Act 1994* (Qld);
 - (b) Removing and disposing of contaminated soil between 26 July 2013 and 31 July 2013 without a permit contrary to s 424(1)(a) of the Act;
 - (c) Removing and disposing of contaminated soil between 26 July 2013 and 31 July 2013 without a permit contrary to s 424(1)(a) of the Act;
 - (d) Removing and disposing of contaminated soil in July 2013 without a permit contrary to s 424(1)(a) of the Act;
- [2] Years later, after the trial of the charges had been underway intermittently over that period, in September 2018 the applicant applied to a Magistrate for a stay of the proceedings. It was contended that the Department of Environment and Heritage Protection was the real complainant and the Department knew of the elements of the offences by no later than 7 August 2013. It followed that the complaints were laid after the relevant limitation period set by s 497 of the Act had expired. There were also arguments about alleged abuse of process and prosecutorial unfairness.
- [3] On 9 November 2018 Magistrate Madsen dismissed the application.
- [4] On 7 December 2018 the applicant appealed to the District Court pursuant to s 222 of the *Justices Act 1886* (Qld).
- [5] In that appeal, the applicant repeated its claim that the real complainant was the Department and that Mr Sargent was only “the human embodiment of the Department for making the complaint”. Because other officers in the Department had relevant knowledge about the offences, the complaints were said to be out of time. Another ground relied upon was that a witness had been called by the prosecution in this case who had been a director of a company that had been the applicant’s co-accused. After he had given his evidence, the charges against the company of which he was a director were dismissed. This is said to constitute an unfairness that would ground a stay of proceedings.
- [6] On 14 June 2019 Jarro DCJ dismissed the appeal.
- [7] The applicant now seeks leave to appeal to this Court.
- [8] The applicant contends once more that the real complainant was the Department and not Mr Sargent. On that basis, it repeats its claim that the prosecution was commenced out of time. However, in this Court the applicant seeks to convert these propositions into three different kinds of errors:

- (a) The “Constitutional Error”, constituted by what is said to be an erroneous conclusion that Mr Sargent was the real complainant;
- (b) The “knowledge error”, constituted by the judge’s conclusion that it was Mr Sargent’s knowledge that was relevant for limitation purposes;
- (c) The “right not to be prosecuted error”, constituted by the first two errors.

[9] There are two reasons why leave ought not be granted.

[10] First, as the respondent correctly submits, an order of the Magistrates Court to refuse an application for a stay is not an order that is amenable to appeal under s 222. This was established in *Schneider v Curtis*.¹ In that case Gibbs J held that an appeal under s 222 lies only from an order that disposes of the complaint. An order refusing a stay of proceedings is, self-evidently, not such an order. Consequently, the appeal to the District Court was incompetent and the order of Jarro DCJ’s dismissing the appeal was rightly made. For that reason leave should be refused.

[11] If it matters, an appeal would have no prospects of success because of the reasons given by Jarro DCJ, namely, that the decision of this Court in *Cross Country Realty Pty Ltd v Peebles*² is directly against the applicant’s contention that knowledge of the offences by other officers in the Department is relevant knowledge for limitation purposes. That case held that such knowledge was irrelevant. The new characterisation of the grounds adds nothing to the case.

[12] For these reasons the application should be refused with costs to be assessed or agreed.

[13] **PHILIPPIDES JA:** I agree with the reasons of Sofronoff P and the orders proposed by his Honour.

[14] **BODDICE J:** I agree with Sofronoff P.

¹ [1967] Qd R 300.

² [2007] 2 Qd R 254.