

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Bundaberg Regional Council v Muller* [2020] QPEC 16

PARTIES: **BUNDABERG REGIONAL COUNCIL**
(Applicant)

v

DEBBIE LORRAINE MULLER AS TRUSTEE
UNDER INSTRUMENT 715669303
(Respondent)

FILE NO/S: 4525 of 2018

DIVISION: Planning and Environment Court, Brisbane

PROCEEDING: Application

ORIGINATING COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 21 April 2020, ex tempore

DELIVERED AT: Brisbane

HEARING DATE: 21 April 2020

JUDGE: Everson DCJ

ORDER: **Application is dismissed**

CATCHWORDS: ENVIRONMENT AND PLANNING – CONTEMPT – PARTICULAR CONTEMPTS – DISOBEDIENCE OF ORDERS OF COURT – where Planning and Environment Court judge has power to punish for contempt – whether the contemnor purged their contempt – whether the applicant conducted itself appropriately

LEGISLATION: *District Court of Queensland Act 1967* (Qld)
Planning Act 2016 (Qld)
Planning and Environment Court Act 2016 (Qld)

CASES: *Bundaberg Regional Council v Lammi* [2015] QPELR 111

COUNSEL: M Connor (solicitor) for the applicant
D Caruana for the respondent

SOLICITORS: Connor O’Meara for the appellant
Bedford & Associates for the respondent

- [1] In this application, the council seeks that Ms Muller be "dealt with" for contempt of court. Ms Muller owned land at 22 Kolan Street, Bundaberg ("the land"). In 2014, she caused a relocated house to be placed there, but failed to undertake various works to complete and secure the house pursuant to the relevant building approval, which subsequently lapsed.
- [2] On 16 March 2018, Rackemann DCJ made an enforcement order pursuant to section 180 of the *Planning Act 2016* (Qld) requiring Ms Muller to take the steps necessary to complete and secure the house or remove it from the land. She completely ignored the requirements of the enforcement order, despite repeated attempts by the council to get her to comply with the enforcement order. Ultimately, the council brought an application seeking that Ms Muller be "dealt with" for contempt on 18 December 2018.
- [3] It was heard and determined by Kefford DCJ on 18 June 2019. Her Honour noted the lengthy history of the matter and was satisfied beyond reasonable doubt that the non-compliances by Ms Muller involved deliberate disobedience of the court's orders. She found Ms Muller in contempt of the enforcement orders. Ms Muller was fined \$5,000, ordered to remove the relocated house from the land and ordered to pay the council's costs in the sum of \$20,000, all by 30 August 2019. Ms Muller failed to comply with the orders of Kefford DCJ.
- [4] The council then brought the application before me today. Wisely, for the first time in this sorry saga, Ms Muller obtained legal advice and representation. In an affidavit filed on 22 November 2019, she apologised to the court for failing to comply with court orders, she detailed attempts to borrow money and engage contractors to remove or demolish the house and she gave evidence of her strained financial circumstances, which are confirmed in a further affidavit filed by leave today. Ms Muller borrowed \$25,000 from her mother and paid the fine and the costs ordered by Kefford DCJ. She either cares for or assists in the care of various relatives, including being the nominated carer for her 29 year old son who suffers from an intellectual impairment. She is 49 years of age and has no criminal history.
- [5] An affidavit of Michael Thomas Ellery filed by the council on 9 March 2020 reveals that Ms Muller accepted an offer by the council (Exhibit "MTE-2") to transfer the land "for nil consideration" upon terms that, inter alia, once the council became the

registered owner of the land, “it will take steps to demolish the existing building...or otherwise remove it, at its own cost.” Exhibit “MTE-1” is a valuation of the land which discloses it is worth up to \$45,000. Exhibit “MTE-4” discloses that on 11 December 2019, the land was transferred to the council.

- [6] In these circumstances, I find that Ms Muller has purged her contempt.
- [7] On the other hand, despite the council obtaining quotations for removing the house in December 2019 for as little as \$15,000 (Exhibit “MTE-5”) there is no evidence that this has occurred. In fact, the submissions made before me today suggest that the house remains on the land contrary to what was ordered by Kefford DCJ. The council is also proposing to use proceeds of the sale of the land for a purpose irrelevant to this proceeding, namely, outstanding infrastructure payments in respect of the property where Ms Muller resides.
- [8] Once I became aware of the current circumstances, I listed the application for review yesterday morning with a view to vacating the hearing today. However, Mr Connor, who appears on behalf of the council, insisted that the matter proceed to a full hearing as he wished to submit that Ms Muller should be further punished.
- [9] It is important to reflect on the nature of proceedings seeking to punish a person for contempt. Pursuant to section 36 of the *Planning and Environment Court Act 2016* (Qld), a judge of this court has the same power to punish a person for contempt as a District Court judge. Thereafter, section 36(2) makes reference to section 129 of the *District Court of Queensland Act 1967* (Qld) which states that a person is in contempt if, relevantly, the person “without lawful excuse, fails to comply with an order of the court”, and that the power of a District Court judge to punish for contempt is the same as exists in the Supreme Court. In *Bundaberg Regional Council v Lammi* [2015] QPELR 111 at 116 [19], Horneman-Wren SC DCJ observed that “the purpose of a court imposing a sanction upon persons in contempt is twofold. It is to punish for the past failure to comply, and to coerce further compliance.”
- [10] On the facts before me, Ms Muller has been punished enough for her past failure to comply with the orders of the court. A woman of limited means has paid a fine, a significant costs order, and has assigned the land to the council for no consideration in circumstances where it appears to be of much greater value than the cost of

removing the house. She has also apologised to the court. I will not punish her further.

- [11] As for the council, despite bringing this application, it has been the only party realistically capable of complying with the outstanding order of Kefford DCJ after it became the owner of the land on 11 December 2019. As noted above, the council has a quote for removing the house dated 19 December 2019 for as little as \$15,000. It has still not removed the house. The council intends to apply the balance of any funds following a sale of the land to debts unrelated to the proceeding before me. It is clear from the letter of offer from the council's solicitors (Exhibit "MTE-2") that any remaining money will be forfeited to the council as it states Ms Muller "will have no claim or other entitlement to the consideration for that sale".
- [12] The conduct of the council in potentially taking more than is necessary to secure compliance with the order of the court concerning removal of the house (but not attending to its compliance) is tantamount to an abuse of process when conducting a proceeding for contempt of court. This is not appropriate conduct by a publicly elected body and falls well short of conducting itself as a model litigant. I am most unimpressed with the attitude of the council in continuing to pursue Ms Muller in circumstances where it appears to have potentially gained a financial advantage at her expense as a consequence of the transfer of the land to it for no consideration.
- [13] I therefore dismiss the application.