

# SUPREME COURT OF QUEENSLAND

CITATION: *D M Beames v State of Queensland & Ors* [2002] QSC 083

PARTIES: **DOUGLAS MACLEOD BEAMES**  
(applicant/plaintiff)  
**STATE OF QUEENSLAND**  
(first respondent)  
**BRISBANE CITY COUNCIL**  
(second respondent)  
**LOREN LEADER, REGISTRAR OF TITLES**  
(third respondent)  
**GEOFFREY IAN RIGBY**  
(fourth respondent)  
**NATIONAL AUSTRALIA BANK LIMITED**  
(fifth respondent)

FILE NO/S: No. S 1161 of 2002

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Applications Court, Brisbane

DELIVERED ON: 15 March 2002

DELIVERED AT: Brisbane

HEARING DATE: 4 March 2002

JUDGE: White J

ORDER: **Dismiss the application.**

CATCHWORDS: TORRENS SYSTEM – REGISTRATION – Survey Plan –  
Description of Riparian Boundary

PROCEDURE – Abuse of process – Res judicata – Re -  
agitation of previous application – *Anshun* principle

*Land Title Act* 1994, s 8(1), s 27, s 28, s 32, s 35, s 185(1)(g)  
*Uniform Civil Procedure Rules*, r 26(2)

*Beames v Leader* [1998] Q ConvR 54-505, considered  
*Beames v Leader* [2000] 1 Qd R 347, considered  
*Henderson v Henderson* (1843) 3 HARE; 67 ER, applied  
*Port of Melbourne Authority v Anshun Pty Ltd* (1998)  
147 CLR 589, applied

COUNSEL: Mr D Beames appeared on his own behalf  
Mr R Douglas SC and Mr R Jones for the first and third  
respondents

Mr E Morzone for the second respondent  
 Mr G Beacham for the fifth respondent  
 Ms C Pyburne, solicitor, for the fourth respondent

SOLICITORS: Chris Reeve & Co. for the applicant  
 Crown Solicitor for the first and third respondents  
 Brisbane City Legal Practice for the second respondent  
 Carne & Herd as town agents for Cartwrights Lawyers for the fourth respondent  
 Thynne & Macartney for the fifth respondent

- [1] The applicant, Mr Beames, a solicitor of this court, is the registered proprietor of Lot 29 on RP 12574 in the County of Stanley Parish of Bulimba. He has been and is engaged in litigation with respect to the registration of his interest in Lot 29 and the extent of its boundaries. He seeks an order that the third respondent, the Registrar of Titles, “actually certify the indefeasible title for Lot 29 in accordance with the freehold land register when a current title search is undertaken”. Mr Beames filed an amended application without objection at the hearing to the following effect:

“... the applicant is applying to the Court pursuant to s. 188(1)(c), (d), (e), (f) and (g) of the *Land Title Act* 1994 for the following orders:

1. The indefeasible titles of the applicant and the fourth and fifth respondents in respect of freehold land described as: containing by admeasurement 556m<sup>2</sup> be the same more or less, situated in the County of Stanley, Parish of Bulimba, being Lot 29 on Registered Plan 12574 (“Lot 29”) be forthwith cancelled by the third respondent pursuant to s. 188B(3)(a) of the *Land Title Act* 1994;
2. The third respondent create a new indefeasible title to freehold land described as: containing by admeasurement 1,157m<sup>2</sup> be the same more or less, situated in the County of Stanley, Parish of Bulimba, being Lot 29 on Registered Plan 905522 (“Lot 29”) by recording the applicant as the registered owner of Lot 29 and the current survey particulars of Lot 29 contained in Registered Plan 905522 in the freehold land register (s. 28 of the *Land Title Act* 1994) pursuant to s. 188B(3)(b) of the *Land Title Act* 1994;
3. The Registrar of Titles do anything else that this Court deems necessary pursuant to s. 188B(3)(d) of the *Land Title Act* 1994 forthwith including:
  - a. the making of full and proper disclosure of the current particulars of Lot 29 recorded in the freehold land register when required;
  - b. the restoring of the particulars of registered plan 905522 deleted as a consequence of the requisition

issued by the Registrar of Titles on 3<sup>rd</sup> December 1998;

- c. the deleting of the words, figures, signature and seal on the face of Registered Plan 905522; THIS PLAN IS A RESURVEY ONLY AND DOES NOT CANCEL OR OTHERWISE EFFECT THE TITLE TO LOT 29 ON RP12574; the signature of Mitchell A/REGISTRAR OF TITLES: and, the seal of the Registrar of Titles;
- d. formally qualify in the usual place on registered plan 905522, plan 905522, plan 905522 as a registered plan;
- e. delete administrative advice “Dealing 701747688 Type TITLE NOTE DEPT OF NATURAL RESOURCES (INTERNAL), BRI/001835 Lodgement Date 09/01/1997 10:37 Status CURRENT”;

- [2] The other respondents to the application are the State of Queensland (first respondent), the Brisbane City Council (second respondent), Geoffrey Ian Rigby (fourth respondent) and National Australia Bank (fifth respondent). Mr Rigby and National Australia Bank have registered first and second mortgages respectively over Lot 29 and the Brisbane City Council has a charge over the land by virtue of outstanding rates. Those respondents, apart from the Registrar of Titles, have been served because they may be directly affected by the relief sought in the application, r 26(2) of the *Uniform Civil Procedure Rules*. The second, fourth and fifth respondents are concerned to protect their interests should the court be minded to grant Mr Beames the relief which he seeks. The State of Queensland is similarly concerned.
- [3] Mr Beames draws attention to the fact that the State of Queensland and the Registrar of Titles appear by the same solicitor and counsel when the Registrar of Titles ought not to be seen to be “taking up the cudgels of the Crown”: *Beames v Leader* [2000] 1 Qd R 347 at 362 per McMurdo P, Thomas JA and Shepherdson J. It is undesirable that there should be the appearance of institutional collusion particularly when the Court of Appeal has made that observation and further when there are proceedings between the State of Queensland and Mr Beames as to ownership of the “extra” land associated with Lot 29.
- [4] Lot 29 which is situated at 61 Gillan Street, Norman Park has three boundaries being the street, the adjoining lot and Norman Creek. It is the latter boundary which is the source of difficulty. A recent survey (905522) shows the Norman Creek boundary as the mean high water mark line of the creek. It differs from RP 12574 prepared and registered in 1915 in that the mean high water mark on the survey plan extends outwards into the creek for distances between 6 to 11 metres beyond the line shown as the bank of Norman Creek in the 1915 plan. Mr Beames contends

that the difference in the boundary results from natural accretions and, perhaps, partly due to survey errors in the 1915 plan. The State of Queensland has taken the view that at least part of the additional area came about through filling or reclamation works and is unallocated Crown land. In action S7742 of 1999 the State of Queensland seeks a declaration that it is the owner of the land comprising the bed and banks of Norman Creek contiguous with or adjacent to Lot 29 which, to use non-technical language, represents the “additions” to Lot 29 since 1915.

- [5] The respondents submit that the application is an abuse of process since substantially the same relief has been sought in previous proceedings or could have been the subject of an application in those proceedings. In *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 Gibbs CJ, Mason and Aickin JJ quoted the following passage with approval from *Henderson v Henderson* (1843) 3 HARE at 115; 67 ER at 319:

“... where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time,” per Sir James Wigram VC.

Their Honours noted that the principle had been affirmed in subsequent cases “In two of these cases the principle was applied so as to shut out litigation of an issue which could and should have been litigated in the earlier proceedings” at 598.

- [6] Lot 29, as was found by the Court of Appeal in *Beames v Leader* [2001] 1 Qd R 347 at 350, has been alienated Crown land since 28 January 1854 when nine acres of land, of which Lot 29 forms part, were granted to the Honourable Louis Hope. The land is described at Lot 29 on RP 12574. That plan was originally surveyed by Surveyor C.E. James in 1915 and registered in that year. As Muir J noted in *Beames v Leader* (1998) Q ConvR 54-506 at 60, 072, the 1915 survey conducted by Surveyor James shows a location for Norman Creek but his field notes do not show whether he purported to identify on the plan as the boundary of Norman Creek a line representing the mean high water mark, the creek bank or some other feature.
- [7] Mr Beames caused Lot 29 on RP 12574 to be resurveyed and Surveyor George L.H. Enever prepared a plan of survey (905522) in 1997. This survey purports to show the mean high water mark of Norman Creek

- [8] It is uncontested that Plan 905522 is a plan of subdivision, being a re-definition of a lot on a resurvey, s 49(d) of the *Land Titels Act* 1994. When Mr Enever attempted to register the resurvey the Registrar of Titles declined to do so on the ground that “an area of unallocated State land has incorrectly been included in Lot 29”. It is undisputed that the resurvey increased substantially the area of land contained in Lot 29 constituted by the area between the line of the creek bank shown in the 1915 survey and the mean high water mark shown in Plan 905522.
- [9] Mr Beames brought an application for a statutory order of review (No. 3910 of 1997) in respect of the Registrar of Titles’ refusal to register the plan of resurvey. One of the grounds (ground 4) was that Plan 905522 accurately shows the location of the mean high water mark boundary of Lot 29 with Norman Creek and ought to be registered. His Honour found against Mr Beames on this ground but found that the Registrar of Titles was obliged to register Plan 905522 once satisfied that it was satisfactory in form. That decision is reported in *Beames v Leader* (1998) Q ConvR 54-506. It will be necessary to return to his Honour’s reasons in more detail to consider the *Anshun* point.
- [10] The Registrar of Titles appealed that order (Appeal No. 4089 of 1998). The Court of Appeal dismissed the appeal on 13 November 1998 on grounds conveniently set out in the head note:
- “(1) ... s. 28(1)(a) [of the *Land Title Act* 1994] required the freehold land register to contain the particulars necessary to identify a lot but not those which conclusively defined it. Accordingly where a lot had two straight line boundaries running at right angles in specified directions from a fixed point and its remaining boundary was the mean high water mark of a creek, the lengths of the straight line boundaries were not such particulars as were required by s. 28(1)(a). *Donaldson v. Hemmant* (1901) 11 Q.L.J. 35 applied.
- (2) That by virtue of s. 185(1)(g) the recording of a mistaken measurement on a registered plan did not lead to an augmentation of the registered proprietor’s indefeasible title.  
*Overland v. Lenehan* (1901) 11 Q.L.J. 59 applied.
- (3) That the Act obliged the registrar of titles to register a plan of survey redefining such a lot, where it contained the particulars necessary to identify the lot, complied with the requirements of s. 50 of the Act and appeared on its face to be capable of registration.
- (4) That accordingly the registrar was not entitled to refuse such registration merely because he or she doubted whether the land the subject of the plan was entirely freehold.”
- [11] Mr Enever sought registration of the survey plan following the decision of the Court of Appeal. In response to a requisition issued by the Registrar of Titles he struck out the words “cancelling Lot 29 on RP 12574” in the description appearing at the foot of the survey plan. The description which had been inserted by Mr Enever was:

“**Plan of Lot 29**, being Resurvey of Lot 29 on RP 12574 cancelling Lot 29 on RP 12574”.

- [12] The Acting Registrar of Titles then endorsed the survey plan with the words “This plan is a resurvey only and does not cancel or otherwise affect the title to Lot 29 on RP 12574.”

The survey plan was then registered.

- [13] When Mr Beames conducted a search of the Land Registry on 22 December 1998 the Registration Confirmation Statement issued did not reveal the existence of the survey plan. Under the heading “ESTATE AND LAND” appeared “Estate in Fee Simple

Lot 29 REGISTERED PLAN 12574  
County of STANLEY Parish of BULIMBA”

Under the description “Title Reference” appears the words “This is the current status of the title as at 15:10 on 22/12/1998”.

- [14] Mr Beames filed an originating summons (No. 1170 of 1999) on 10 February 1999 seeking an order that:  
“The Registrar of Land Titles forthwith correct the freehold land register by properly recording particulars of resurvey plan 905522 registered on 22 December 1998 in the Freehold Land Register in accordance with Section 173 of the Act.”

Section 173 of the *Land Title Act* provides that the Registrar of Titles registers an instrument in the freehold land registry by recording in the register the particulars necessary to identify the instrument.

- [15] Before Muir J, who heard this application, Mr Beames contended that the survey plan had not been registered or alternatively that the Registrar of Titles was in breach of his obligations under the *Land Title Act* in that, on the present state of the freehold land register, it would not be possible for a person to “search and obtain a copy of ... the indefeasible title of (the) lot.” The Registrar of Titles contended that he had complied with the requirements of the Act because a resurvey plan does not create an interest and only current interests are shown on the register of freehold land interests. An historical search would, however, show all registrations since 1994 when the automated title system commenced operation. That search would show the registration of resurvey Plan 905522.
- [16] His Honour considered the requirements of the *Land Title Act* 1994 concerning the register. He noted that the indefeasible title for a lot is created by the recording of the current particulars of the lot in the freehold land register. He further noted that an instrument is registered in the freehold land register by recording on it the particulars necessary to identify the instrument, ss 173, 174.

- [17] His Honour concluded that the Registrar of Titles had failed to register Plan 905522:

“Current particulars’ of a lot include at least, a reference to the most recent plan of survey registered in respect of the lot. It seems to me to be rather artificial to conclude that the right created by section 35 would be availed of in circumstances in which a person making a search of the register to ascertain the current particulars in relation to the title would not be alerted to the existence of the most recent plan of survey unless that person also undertook what the respondent [Registrar of Titles] describes as an ‘historical title search.’” pp 6-7 of his Honour’s reasons for judgment delivered 26 February 1999.

His Honour proposed that he should declare that the Registrar of Titles was required to register Plan 905522 by including the words and figures “Plan of resurvey no. 905522” in that part of the freehold land register which records the current status of Lot 29 on registered plan 12574 and which is accessible on a search of an indefeasible title to the lot. It would seem that that was the order made, but it is not clear from the endorsement on the file.

- [18] Thereafter, on a current title search in respect of Lot 29 on Registered Plan 12574 the freehold land register showed under the heading “ADMINISTRATIVE ADVICES” “PLAN OF RESURVEY No. 905522”. A second entry appears under this heading immediately following the words “PLAN OF RESURVEY NO. 905522” as follows:

Dealing	Type	Lodgment Date	Status
701747688	TITLE NOTE	09/01/1997 10:37	CURRENT

DEPT OF NATURAL RESOURCES (INTERNAL), BR/001835”.

This is a “General Request” in Form 14 version 2 pursuant to the *Land Titles Act* from a senior land officer in the Department of Natural Resources and was registered on 8 January 1997. It states:

“AN ADMINISTRATIVE ADVICE BE RECORDED IN RESPECT OF THE IMPROVEMENTS CONSTRUCTED ON THIS LOT EXTENDING ON TO THE ADJOINING UNALLOCATED STATE LAND.”

That notation refers to the land the subject of the proceedings by the State of Queensland against Mr Beames. It was included in Mr Beame’s material in earlier proceedings.

- [19] Mr Beames was of the opinion that including Plan 905522 under “Administrative Advices” did not comply with the spirit of his Honour’s order and re-listed the matter for hearing before Muir J. An officer of the Registrar of Titles deposed that to include a reference to the new plan under the heading “EASEMENTS ENCUMBRANCES AND INTERESTS” would require re-designing the database tables of the Land Titles Office. His Honour seems to have accepted this. Mr Beames contended that although the alteration to the register, made after Muir J’s earlier declaration, complied with the requirements of s 30 of the *Land*

*Title Act* the new plan should be included in that part of the freehold land register which records the current status of the title of Lot 29 on RP 12574 since placing Plan 905522 under “Administrative Advices” would not comply with the requirement that it “is accessible on a search of the indefeasible title to the lot”.

[20] His Honour summarised Mr Beames’ position at p. 3 of his reasons delivered 7 May 1999

- “• Administrative advices are not “particulars” or “current particulars” but information useful for administrative purposes only and deal, normally, with unregistered matters.
- There has been a failure to comply with s.32 of the Act which provides-

“In registering an instrument affecting a lot, the registrar must give the instrument a distinguishing reference and record the reference in the particulars in the freehold land register about the lot.”

- The absence of the word “registered” before the words “PLAN OF RE-SURVEY 905522” “suggests that” the new plan “is an unregistered dealing”.
- The parts of the “indefeasible title” where the current particulars, and the dealing numbers should, and normally do, appear are under “REGISTERED OWNER” and under the heading “EASEMENTS, ENCUMBRANCES AND INTERESTS”.

[21] His Honour concluded that the alteration of the register to include Plan 905522 even if only under “Administrative Advices” constituted conformity with the declaration made on 26 February 1999. His Honour noted s 8(1) of the *Land Title Act*, which provides that the register may be kept by the registrar in the form that the registrar considers appropriate subject to any specific requirements of the *Land Title Act*. Having concluded that no specific requirements had been infringed, his Honour said:

“I concede that the inclusion of the reference to the new plan under the heading “ADMINISTRATIVE ADVICES” has its imperfections, but I am not prepared to find that this method of recording is erroneous or even misleading. The fact that the word “registered” does not appear before “PLAN OF RESURVEY NO. 905522” does not appear to me to suggest lack of registration. A few lines down in the current title search the words “UNREGISTERED DEALINGS - NIL” appear. Also, there are references to mortgage, a transfer, a caveat and a deed of grant under the heading ‘EASEMENTS, ENCUMBRANCES AND INTERESTS’. In none of those instances does the word ‘registered’ appear. Yet it is plain enough, I think, that reference is being made to registered instruments.”

[22] For completeness, Mr Beames filed an application for summary judgment in No. S7742 of 1999 (*State of Queensland v Beames*). That application was dismissed by Wilson J on 8 May 2001. On 5 June 2001 Mr Beames filed a notice of appeal which has been set down for hearing on 25 March 2002.

[23] Mr Beames submits that the issue which he raises in this application has not been raised before and relates to conduct of the Registrar of Titles after Muir J's decision on 7 May 1999. In order to summarise accurately Mr Beames' position on this application I set out what appears to be at the heart of his submissions (paragraph (8)):

- “• On looking at registered plan 12674 referred to in this Current Title Search, the area of Lot 29 is 22 perches (556m<sup>2</sup>), and, the plan 12574 was registered in 1915;
- A reference to plan 905522 is made under the heading “Administrative Advices”. On looking at registered plan 905522 there is no reference to when this plan was registered or that it is registered although licensed surveyor George Enever Pty Ltd prepared this plan in 1997. This plan (a resurvey of Lot 29 on RP 12574) shows the area at 1,157m<sup>2</sup> and a measurement of Lot 29's ambulatory boundary of Norman Creek at the time of that survey;
- The handwritten words under the seal of the Registrar of Titles: “THIS PLAN IS A RESURVEY ONLY AND DOES NOT CANCEL OR OTHERWISE EFFECT [sic on the document] THE TITLE TO LOT 29 ON RP 12574” appear across the face of registered plan 905522. The inevitable conclusion upon reading these words is that although registered, plan 905522 does not represent the current survey particulars of the indefeasible title to Lot 29. The insertion of the words is a tampering with the freehold land register and the words appear to give justification for the registrar's concealment of the current survey particulars recorded in the freehold land register and indeed “the Land register”.
- The words deleted from the description box at the foot of plan 905522 in compliance with the requisition of 3 December 1998 do not alter the function of the survey merely the description of that survey function. The deletions made at *gun point* serve only to confuse an observer who looks only to the description box at the foot of the plan 905522 to see what the resurvey does instead of looking to the Field Notes to plan 905522 in the freehold land register.
- The second administrative advice appearing on the Current title Search records that the building constructed on Lot 29 encroaches on State owned land. By current (case managed) proceedings S7742 of 1999, the State of Queensland is only

now claiming ownership of the land. By the tenor of the second administrative advice, the State of Queensland already owns the land and the applicant's building on Lot 29 encroaches on this State owned land. Registered plan 905522 does not show Lot 29 incorporating any State owned land. The registrar's failure to disclose the current survey particulars (provided by RP 905522 and its Field Notes) when a current title search is undertaken and his maintenance of the second administrative advice notwithstanding the registration of plan 905522 is taking up the cudgels of the State of Queensland, a party to a dispute with the applicant over the boundaries of Lot 29. In these circumstances the registrar should never have registered the Request nor should he maintain that the building on Lot 29 encroaches on State land."

- [24] Mr Beames is critical of a regime which apparently allows such exclusive discernment to the Registrar of Titles which postdates the 1994 change to an electronic register. He contends that as a consequence of the concealment of the particulars of Plan 905522 he has been unable to deal with his land. Lest Mr Beames' position be thought to be merely a yearning for a previous practice, Muir J noted at 60, 081 of *Beames v Leader* (1998) 2 Conv R 54-506:

"The applicant is in a most unfortunate position. He purchased the land and an adjoining lot in order to build on the two parcels. After he commenced building, doubts as to the creek boundary of the two parcels emerged and the local authority issued a stop work notice on the basis that the applicant's building extended beyond the property boundaries into Norman Creek."

- [25] I have concluded that all of the facts upon which the present application are based were known, at the latest by the final hearing before Muir J. If the concerns now expressed were not developed before his Honour that does not, consistently with the principles to which I have earlier referred set out in *Anshun*, permit Mr Beames to make another attempt. In effect, the present application is an attempt to re-agitate the form and substance of the treatment of Plan 905522 by the Registrar of Titles. The reality is, Mr Beames does not accept Muir J's ruling of 7 May 1999 about the appropriateness of the way in which Plan 905522 was registered. His remedy was to appeal his Honour's ruling.

- [26] Mr Beames expressed concern that his precarious financial position meant that he could not brief senior counsel to appear on his behalf and thus could not, himself, do justice to his cause. If I might, with respect to Mr Beames, comment: his submissions both orally and in writing were made clearly.

- [27] I dismiss the application. The Crown solicitor wrote to Mr Beames when the application was served expressly contending that these matters had already been disposed of by the Court and constituted an abuse of process. The first and third

respondents seek their costs on an indemnity basis from Mr Beames. I will hear submissions as to why such an order ought not be made.