

SUPREME COURT OF QUEENSLAND

CITATION: *Beames v Old & Ors; Beames v Christiansen & Ors* [2003] QCA 39

PARTIES: **BEAMES, Douglas Macleod**
(applicant/appellant)
v
STATE OF QUEENSLAND
(first respondent/applicant)
BRISBANE CITY COUNCIL
(second respondent/second respondent)
LOREN R LEADER, REGISTRAR OF TITLES
(third respondent/applicant)
GEOFFREY IAN RIGBY
(fourth respondent)
NATIONAL AUSTRALIA BANK
(fifth respondent)

BEAMES, Douglas Macleod
(applicant/appellant)
v
MYRA BEBE CHRISTIANSEN & FREDDY GIUSTO FRAGIACOMO
(first respondent/first respondent)
PERPETUAL TRUSTEES AUSTRALIA LTD
(second respondent/second respondent)
MAX LOCKE, REGISTRAR OF TITLES
(third respondent/applicant)

FILE NO/S: CA No 2625 of 2002
CA No 4191 of 2002
SC No 1161 of 2002

DIVISION: Court of Appeal

PROCEEDINGS: Miscellaneous Applications - Civil

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED EX TEMPORE ON: 13 February 2003

DELIVERED AT: Brisbane

HEARING DATE: 13 February 2003

JUDGES: McMurdo P, Williams JA and Mullins J
Separate reasons for judgment of each member of the Court;
each concurring as to the order made

ORDER: **In each appeal, the appeals against the respondents are struck out with costs of this application and the appeal**

CATCHWORDS: BANKRUPTCY – APPEALS – SETTING ASIDE, STAY OR OBJECTIONS – GENERALLY – where trustees in

bankruptcy discontinuing appeal – whether appellant has standing - whether appeal should be stayed or struck out pursuant to s 63 of the *Bankruptcy Act* 1966 (Cth)

COSTS – SECURITY FOR COSTS – OTHER MATTERS – whether appellant should provide security for the costs of the appeal

Bankruptcy Act 1966 (Cth), s 60, s 62, s 63, s 178

Theissbacher v MacGregor Garrick & Co (1993) 2Qd R 223, considered

Finikiotis v Knight Frank (SA) P/L [2001] FCA 1733, considered

- COUNSEL: The applicant/ appellant appeared on his own behalf
R Jones for the first respondent and third respondent in CA No 2625 of 2002 and the third respondent/ applicant in CA No 4191 of 2002
E Morzone for the second respondent in CA No 2625 of 2002
G Beacham for the fifth respondent in CA No 2625 of 2002
I Innes for the first and second respondent in CA No 4191 of 2002
A Lavin for the fourth respondent in CA No 2625 of 2002
- SOLICITORS: The applicant/ appellant appeared on his own behalf
C W Lohe, Crown Solicitor, for the first respondent and third respondent in CA No 2625 of 2002 and the third respondent in CA No 4191 of 2002
Brisbane City Council for the second respondent/applicant in CA No 2625 of 2002
Thynne & McCartney for the fifth respondent in CA No 2625 of 2002
Blake Dawson Waldron for the first and second respondent in CA NO 4191 of 2002
Carne Reidy Herd for the fourth respondent in CA No 2625 of 2002

THE PRESIDENT: The appeals the subject of this application were brought by Mr Beames, a solicitor who is representing himself. The various applicants apply to strike out both appeals under s 60 Bankruptcy Act 1966 (Cth) ('the Act') on the grounds that the appellant is bankrupt and therefore has no standing to continue the appeal.

The Appeal 2625 of 2002 was commenced on 19 March 2001 and Appeal 4191 of 2002 on 10 May 2002. They are now both old

matters in this Court. On the 30th of May 2002 the appellant was declared bankrupt. Under s 62 of the Act an action commenced by a person who then becomes a bankrupt is stayed until the trustee in bankruptcy makes an election writing to prosecute or discontinue the action.

The appellant has appealed in the Federal Court a sequestration order made against him. That appeal is presently stayed because he has failed to provide security for costs in accordance with a Federal Court order. Provision of that security is now four or five months overdue. The trustees in bankruptcy have been effectively served with notice of the appellant's appeal (see s 63 of the Act) on 26 June 2002 by way of a letter from Crown Law, the solicitors for some of the applicants, to the official receiver. On 18 September 2002, the trustees in bankruptcy informed the applicants they would not be continuing these appeals on behalf of the appellant. They have more recently confirmed that position.

Mr Beames' non-compliance with the order for security for costs has the effect of abandoning, or at least staying, his appeal against the sequestration order. The consequence is under s 63 of the Act, the appellant is deemed to have abandoned these appeals.

Mr Beames raises a number of matters before us today.

Firstly, he says the application is defective as it was brought against him and not the trustees in bankruptcy. We have been told from the Bar table that the trustees in bankruptcy were, in fact, served with this application but, in any case, they have indicated on a number of occasions that they do not intend to pursue this litigation. The fact that the applicants were courteous and cautious enough to serve Mr Beames personally does not make these applications defective.

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Mr Beames' next point is that the Registrar of Titles is not a party to this application, but the documents indicate that the Registrar of Titles is a party to the applications. There is nothing in this point.

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Finally, Mr Beames informs us that he has now made an application to the Federal Court under s 178 of the Act, which he hopes will eventually end his bankruptcy and enable him to pursue these appeals. I should mention also that he says he has applied for special leave to the Higher Court in another matter but he has not persuaded me that that matter has any effect on the outcome of his ability to prosecute these appeals in the future by ending his bankruptcy. He contends that the appropriate course is not to strike out these appeals but rather to adjourn them, pending the outcome of the Federal Court application under s 178 of the Act.

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In the end, the only live question for this Court is whether the appeals should be stayed rather than struck out, because of the effect of s 63 of the Act. I have considered the

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observations of Pincus JA and White J in Theissbacher v. MacGregor Garrick & Co (1993) 2 QdR 223 at 230 and the position taken by the Federal Court in Finikiotis v. Knight Frank (SA) Pty Ltd [2001] FCA 1733, (22 November 2001) but, in the circumstances here, the latter course of striking out the appeals seems appropriate. If Mr Beames is ultimately successful in his application in the Federal Court, he will be able to apply for an extension of time within which to appeal should he wish to renew these appeals.

The orders I propose are that in each appeal, the appeals against the respondents are struck out with costs of this application and the appeal.

WILLIAMS JA: On material before the Court, I am satisfied each appeal should be stuck out. I agree with the reasons of the President and the order proposed.

MULLINS J: I also agree with the reasons of the President and the orders proposed.

THE PRESIDENT: Those are the orders of the Court.
