

SUPREME COURT OF QUEENSLAND

CITATION: *Goodwin v Goodwin & Anor* [2004] QCA 35

PARTIES: **ELMA AGNES GOODWIN**
(applicant/respondent)
v
SHANE CHRISTOPHER GOODWIN
(first respondent/applicant)
KERRI GAYLE GOODWIN
(second respondent)

FILE NO/S: Appeal No 9057 of 2003
DC No 4 of 2004

DIVISION: Court of Appeal

PROCEEDING: Application for Stay of Execution

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 18 February 2004

DELIVERED AT: Brisbane

HEARING DATE: 18 February 2004

JUDGE: Davies JA

ORDER: **Application for stay of execution dismissed with costs**

CATCHWORDS: REAL PROPERTY - GENERAL PRINCIPLES - INCIDENTS OF ESTATES AND INTERESTS IN LAND - POSSESSION - where trustees were appointed to sell land co-owned by the applicant - where applicant seeks a stay of execution of orders allowing sale of land - where appeal is to be heard at a later date - whether the ordinary principle of a successful party being entitled to enforce a judgment should be displaced in these circumstances

COUNSEL: Applicant appeared on his own behalf
L A Stephens for the respondent

SOLICITORS: Applicant appeared on his own behalf
G J Buckley & Associates (Laidley) for the respondent

DAVIES JA: On 12 September 2003 the respondent, Elma Agnes Goodwin, obtained orders in the Kingaroy District Court pursuant to s 38 of the *Property Law Act* 1974, appointing trustees for the sale of property co-owned by her, the

applicant and the applicant's wife. The property is a farm situated at Kingaroy and owned by the parties in the following shares as tenants in common: Elma Agnes Goodwin, the respondent and applicant's mother, a three-fifths interest; the applicant himself, a one-fifth interest; and his wife a one-fifth interest.

The respondent tried to sell her share of the property to the applicant and his wife for the sum of \$80,000 but the offer was refused. The respondent then sought the orders that were subsequently given in the Kingaroy District Court. The applicant seeks a stay of execution of the orders made in that Court, pending the appeal to be heard in this Court on the 27th of this month.

The application is against only Elma Agnes Goodwin. The trustees, in whom the property is now vested, are not made parties to this application. Previous applications for a stay of execution of this judgment have been made to the District Court. The first was made to Judge Noud. Judge Noud transferred the matter to Maroochydoore, to be heard by Judge Robertson, the original primary judge, or if he was unavailable, Judge Dodds.

The applicant did not proceed with that application. However, he made a second application in Brisbane, before another District Court judge, Judge Brabazon, and that application was dismissed.

From the applicant's many affidavits it appears that the stay is sought to prevent the respondent from enforcing vacant possession of the farmland before the hearing of the appeal. The applicant claims he will be unable to maintain farm commitments or settle his children if they are forced to vacate the land pending the appeal.

To succeed in an application for stay the applicant must show good reason for the stay to be granted and that it is an appropriate case in which to grant a stay. The applicant's prospects of success in his subsequent appeal are a relevant factor in considering whether a stay of execution should be granted.

From the written outline of the applicant, it appears that when this matter reaches appeal he will argue that there was a binding contract in existence between the applicant and the respondent at the time of the original s 38 *Property Law Act* application and, as such, the order to appoint trustees should be reversed. Also the applicant will apparently seek to have the alleged contract in existence recognised and fulfilled by the respondent. Alternatively, he seeks an order for a re-hearing on the ground of natural justice and/or miscarriage of justice.

The applicant's claim that a contract was in existence between the applicants and the respondent does not appear to be supported by the documents submitted by the applicant in

affidavit evidence, including the documents which were put before me this morning for the first time.

The applicant submits that he was denied natural justice at the previous hearing and that he subsequently suffered a miscarriage of justice. He relies on the fact that affidavit evidence used in the proceeding was not filed within time and that the learned trial Judge failed sufficiently to take into account his medical condition.

Without coming to a conclusion on the outcome for the pending appeal - and, of course, I would not do that - it seems to me that the applicant's submissions on the substantive questions are not compelling and, in my view, have not demonstrated a good arguable case on appeal.

A successful party who is entitled to a judgment is ordinarily entitled to enforce that judgment. For the reasons I have already given - that is that there is no good arguable case and that the trustees have not been made parties to this application - this is not a case which, in my opinion, the ordinary principle should be displaced.

I would therefore dismiss the application with costs and I do so.
