SUPREME COURT OF QUEENSLAND

CITATION:	*Myles Thompson (a firm) v Coffey* [2005] QCA 131
PARTIES:	**MYLES THOMPSON (a firm)** (applicant/respondent) **v** **JOHN LAWRENCE COFFEY** (respondent/applicant)
FILE NO/S:	Appeal No 1877 of 2005 DC No 38 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension of Time s 118 DCA (Civil)
ORIGINATING COURT:	District Court at Cairns
DELIVERED ON:	29 April 2005
DELIVERED AT:	Brisbane
HEARING DATE:	21 April 2005
JUDGES:	McMurdo P, Williams JA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for an extension of time for leave to appeal dismissed with costs to be assessed**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – WHEN REFUSED – the respondent held money on trust for client – client indebted to applicant as a result of costs order – applicant obtained an enforcement warrant against the respondent for monies held in trust – respondent paid trust money to the applicant and successfully sought an order setting aside the enforcement warrant on the grounds that there were no further monies to which the warrant could apply – whether the applicant demonstrated a right to appeal pursuant to s 118(2)(b) or s 118(3) of the *District Court of Queensland Act* 1967 (Qld) *District Court of Queensland Act* 1967 (Qld), s 118 *Supreme Court of Queensland Act* 1991 (Qld), s 92 *Uniform Civil Procedure Rules* 1999 (Qld), r 819, r 840 *Praxis Pty Ltd v Hewbridge Pty Ltd* [2004] QCA 79; Appeal No 547 of 2004, 26 March 2004, followed

COUNSEL: A C Wrenn for the applicant
M P Sumner-Potts for the respondent

SOLICITORS: The applicant appeared on his own behalf
The respondent appeared on his own behalf

[1] **McMURDO P:** I agree with William JA's reasons for ordering that the application for an extension of time for leave to appeal should be dismissed with costs to be assessed.

[2] **WILLIAMS JA:** Consequent upon litigation between the applicant (Coffey) and one Riddle (the particulars of which are irrelevant for present purposes), Riddle was indebted to the applicant. It can be accepted for present purposes that as at 30 November 2004 Riddle was indebted to the applicant in the sum of at least $4,426.88.

[3] The respondent, Myles Thompson, had acted as solicitor for Riddle in the litigation and the applicant became aware that there was a sum of money in the respondent's trust account being held on trust for Riddle. In consequence, pursuant to r 840 of the *Uniform Civil Procedure Rules* 1999 (Qld) (the "UCPR"), the applicant obtained from the District Court at Cairns an "Enforcement Warrant - Redirection of Debt" on 30 November 2004 addressed to the respondent. The warrant was served on the day it was issued.

[4] At the time the respondent was served with that warrant there was in the trust account $1,080.53 held for Riddle. On 17 December 2004 the respondent paid that sum to the applicant; the applicant acknowledges receipt of that sum.

[5] In circumstances which will be enlarged upon subsequently the respondent applied by application filed 6 January 2005 for an order, relying at least in part on r 819 of the UCPR, that the warrant be set aside. The application was heard by Bradley DCJ on 28 January 2005, and she ordered that the enforcement warrant be set aside and further ordered the present applicant to pay the respondent's costs with respect to that application.

[6] The applicant sought to appeal against that decision of 28 January 2005 and forwarded papers to the Brisbane Registry of the Court of Appeal by post. In the ordinary course of events those papers would have been received by the registry within the time limited for appealing, but because the applicant used a post box number which had not been used by the registry for more than two years the papers were returned to him. He was then out of time in lodging the necessary documents to initiate an appeal, and in consequence now seeks an extension of time within which to appeal.

[7] The applicant through his counsel contends that, subject to the extension of time, he has a right of appeal pursuant to s 118(2)(b) of the *District Court of Queensland Act* 1967 (Qld), or if not, the matter was an appropriate one for the granting of leave pursuant to s 118(3) of that Act.

[8] At the outset of the hearing the Court intimated to counsel for the applicant that if he was able to demonstrate either a right of appeal or grounds for obtaining leave to appeal, an extension of time would be granted.

[9] Counsel submitted that pursuant to s 118(2)(b) the applicant had a right of appeal because he was "dissatisfied with a final judgment" which related "to a claim for, or relating to, property that has a value equal to or more than the Magistrates Courts jurisdictional limit." That limit is $50,000. The applicant relies on the fact that the original litigation involved a sum in excess of $50,000, and in consequence it is said that the judgment of 28 January 2005 related to a claim for more than $50,000.

[10] The argument is flawed. The judgment the subject of the appeal is not a final judgment relating to a claim for more than $50,000. This court in *Praxis Pty Ltd v Hewbridge Pty Ltd* [2004] QCA 79; Appeal No 547 of 2004, 26 March 2004, clearly held that to make the decision appealable as of right under s 118(2)(b) "the judgment must relate to a claim for, or relating to, property having a value equal to or more than $50,000". The reasoning of the court in that case is a complete answer to the submission advanced by the applicant here. There is no appeal as of right.

[11] Counsel for the applicant then contended that the proposed appeal involved a matter of public importance or public interest, namely whether the rights of an enforcement creditor pursuant to an enforcement warrant redirecting debt should be set aside by the "third person" during the twelve month period the warrant would ordinarily be in force pursuant to s 92 of the *Supreme Court of Queensland Act* 1991 (Qld).

[12] It was not disputed that by letter dated 27 January 2005, the day before the hearing, the respondent informed the Registrar that he did not wish to proceed with the application and asked that it not be put before the court. But that letter was not legally effective to constitute a withdrawal of the application. Counsel for the respondent (the then applicant) appeared before the court on 28 January 2005 and there was also an appearance by counsel for the applicant (the then respondent). The court was informed that the present respondent wished to proceed with the application and counsel for the applicant indicated to the court that he was prepared to argue the matter on the merits. Both counsel then addressed on the merits of the application.

[13] It clearly emerged that the respondent was no longer the solicitor for Riddle; there had been a breakdown in that relationship. It was also not contested that as at that date the applicant was not holding any monies in a trust account on behalf of Riddle. In those circumstances the respondent, largely because he was a solicitor, wanted to have the warrant struck out so that it was not hanging over his head until November 2005.

[14] The applicant sought during the hearing at first instance to put a further affidavit before the court but it was rejected. That decision of the judge was not challenged before this Court. Both before the judge at first instance, and again in this Court, counsel for the applicant sought to rely on an argument that it was possible that an amount of $300 would come into the trust account on behalf of Riddle and would be subject to the warrant if it remained in force.

[15] The material indicates that on or about 22 July 2004 the respondent received into the trust account from the Appeal Costs Board the sum of $3,046.34 on behalf of Riddle. From that, deductions were made to meet costs incurred on behalf of Riddle. It was after those deductions that the amount of $1,080.53 remained in the trust account on the date when the warrant was served.

[16] Counsel for the applicant contended that a disbursement of $300 had been made, ostensibly in payment of counsel for an appearance on 9 August 2001, whereas the court record did not reveal any appearance on that date. He contended it was arguable that amount would have to be refunded. That matter was not the subject of full enquiry before the judge at first instance and there may well be explanations for the disbursement.

[17] Whether or not that disbursement was properly made the fact is that there was no indebtedness by the respondent, the "third person" for purposes of r 840 of the UCPR, as at the date of hearing the application and there was no positive indication that any such indebtedness would arise in the future. Paragraphs (1) and (3) of that rule would appear not to apply to a possible contingent indebtedness in the sum of $300.

[18] It is sufficient for present purposes to say that making an order striking out the warrant pursuant to r 819 of the UCPR because as at 28 January 2005 there was no further monies to which the warrant could apply did not give rise to any question of law as would, in the public interest, justify this Court granting leave to appeal. Indeed on the material presently available it would appear that the decision to strike out the warrant was correct.

[19] The judge at first instance also ordered the applicant to pay the respondent's costs of the application. That order would appear to have been based on the fact that the applicant unreasonably opposed the making of the order. On the hearing before this Court counsel for the applicant virtually conceded that he could not contend that there was such an error in the exercise of discretion by the judge at first instance in making the order for costs as would justify the granting of leave to appeal.

[20] It follows that the applicant has not demonstrated pursuant to s 118(3) of the *District Court of Queensland Act* 1967 (Qld) that this is a case where leave to appeal should be granted.

[21] The application for an extension of time for leave to appeal is dismissed with costs to be assessed.

[22] **PHILIPPIDES J:** I agree with the reasons for judgment of Williams JA and with the order proposed.