

# SUPREME COURT OF QUEENSLAND

CITATION: *Levitt Robinson Solicitors v Pereira* [2010] QSC 119

PARTIES: **LEVITT ROBINSON SOLICITORS**  
(applicants)  
v  
**SIMONE MELISSA PEREIRA**  
(respondent)

FILE NO: BS 11151 of 2008

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 22 April 2010

DELIVERED AT: Brisbane

HEARING DATE: Application on the papers

JUDGE: Fryberg J

ORDERS: **Application dismissed.**

CATCHWORDS: Procedure – Supreme Court procedure – Queensland –  
Procedure under Rules of Court – Other matters – Solicitor’s  
withdrawal from record

*Uniform Civil Procedure Rules 1999 (Qld), r 990, r 991*

SOLICITORS: Levitt Robinson Solicitors for the applicant  
No appearance for the respondent

- [1] **FRYBERG J:** The applicants, the solicitors for the defendant in claim 11151 of 2008 between Australian Executive Trustees Limited as plaintiff and the present respondent as defendant, have applied for leave to withdraw from the record pursuant to r 991 of the *Uniform Civil Procedure Rules 1999*. They do so on the ground that they are unable to contact the defendant.
- [2] The evidence in support of the application is confused and incomplete. It consists simply of an affidavit a little over a page in length plus exhibits made by a solicitor employed by the applicant.
- [3] The affidavit is silent as to when and in what circumstances the solicitors were retained by the defendant, save that it records that she was referred to them by a man named Guy Castellino. It does not state what postal or e-mail addresses or

what telephone number (if any) the solicitors obtained from Ms Pereira at the time they were retained. It does state that her address at the time the plaintiff issued the statement of claim (filed on 4 November 2008) was 26 Llandilo Ave, Strathfield, but it also asserts that the only contact address which the solicitors have is c/- Guy Castellino, Leichhardt Mortgage Market, 403 Parramatta Rd, Leichhardt, New South Wales 2040. That seems a little inconsistent with the particulars of the defendant which the solicitors gave in the notice of intention to defend filed on 17 April 2009. There they asserted that the defendant's residential or business address was 26 Llandilo Ave, Strathfield, NSW 2135.

- [4] The solicitor deposed that in late October 2009 she telephoned Mr Castellino. She sets out the conversation:

“I said: ‘I have been unable to contact Simone, I have done a title search and she does not own 26 Llandilo Avenue, Strathfield.’

He said: ‘No she doesn’t own that property. She was renting it. I will get her to come in and see you.’

I said: ‘We have to withdraw from the proceedings unless we obtain further instructions from her.’

He said: ‘We will not be happy if you withdraw. I will get her to contact you.’”

She did not verify the truth of what was said in the conversation. However she deposed that a search for property in the name of Ms Pereira revealed that there was no property in New South Wales in her name.

- [5] In December 2009 the solicitors sent Ms Pereira a written notice of their intention to apply for leave to withdraw, addressed to her c/- Mr Castellino. There was no response to that letter.
- [6] The only other evidence comprises an e-mail from the solicitors to the Court in which the solicitors assert that they are “having difficulty obtaining instructions from Ms Pereira”. They do not allege that they are unable to contact her, nor is the assertion of difficulty obtaining instructions in the e-mail verified in the affidavit. In any event, mere difficulty might not warrant permitting them to withdraw.
- [7] I am not satisfied that the solicitors are unable to contact Ms Pereira. There is no history of unsuccessful attempts to contact her by letter; there has been no attempt to find out if she is living at the address at Strathfield on the court documents; there is no suggestion that mail sent to that address has been returned; there has been no follow-up with Mr Castellino regarding his statement that he would get her to contact the solicitors, nor has he been asked where she may now be contacted; and there is no evidence about attempts to contact her by telephone or e-mail.
- [8] Neither am I satisfied that the solicitors have complied with r 990(1) of the *Uniform Civil Procedure Rules*, which requires them to give notice to their client of their intention to apply for leave. I am not satisfied that the letter sent

c/- Mr Castellino can be said to be notice to Ms Pereira. There has been no application to dispense with this requirement.

[9] Finally, there is no evidence that the solicitors have complied with r 990(2), which requires the application to be served on Ms Pereira.

[10] The application is dismissed.