

SUPREME COURT OF QUEENSLAND

CITATION: *Re Northern Premium Funding Pty Ltd* [2011] QSC 265

PARTIES: **IN THE MATTER OF NORTHERN PREMIUM FUNDING PTY LTD**
(applicant)

FILE NO/S: 7351 of 2011

DIVISION: Trial Division

PROCEEDING: Originating application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 8 September 2011

DELIVERED AT: Brisbane

HEARING DATE: 23 August 2011

JUDGE: Boddice J

DIRECTIONS:

1. **NPF should make application for the appointment of receivers to collect, get in and receive funds deposited in the Bank of Queensland accounts numbers 11476936 and 21458361 in the name of the applicant:**
 - (a) **to apply those funds in payment of the taxpayers tax refunds listed in Exhibit BSM-38 to the affidavit of Bruce Stephen Maizey filed herein; and**
 - (b) **to apply the balance of those funds in payment of the accountants fees listed in Exhibit BSM-11 to the affidavit of Bruce Stephen Maizey filed herein.**
2. **A copy of any such application and the supporting affidavits in relation thereto be served on Bank of Queensland Limited, and all accountants who were clients of the EasyTrust scheme.**

CATCHWORDS: EQUITY – TRUSTS AND TRUSTEES – APPLICATIONS TO COURT FOR ADVICE AND AUTHORITY – Where application made pursuant to s 96 of the Trusts Act 1973 (Qld) – Where directions sought concerning the appointment of receivers and external administration – Whether moneys held in suspended accounts are trust moneys – Whether an impartial controller of the funds to be appointed

Trusts Act 1973 (Qld)

Uniform Civil Procedure Rules 1999 (Qld)

Fitzgerald v Smith (1889) 15 VLR 467

Re Atkinson deceased [1971] VR 612

COUNSEL: Redmond, F for the applicant

SOLICITORS: McCartney Durie for the applicant

- [2] By originating application filed 22 August 2011, Northern Premium Funding Pty Ltd (“NPF”) makes application pursuant to s 96 of the *Trusts Act 1973 (Qld)* for direction as to whether it should apply for the appointment of receivers to collect, get in and receive funds deposited in specific Bank of Queensland accounts, or as to whether it should be placed in external administration. The originating application also sought direction as to the parties to be given notice of, or served with, any such application.

Background

- [3] NPF was incorporated on 13 January 1999. In or about 2002 or 2003, it developed the Easy Trust System (“EasyTrust”) which provides tax agents and the taxpayer clients online tax refund processing with automatic trust account reconciliation.
- [4] In or about April 2006, NPF was purchased by Bruce Stephen Maizey and Nicole Ryan. They continued to operate NPF thereafter. In or about April 2010, Maizey and Ryan set up a mortgage offset account with Bank of Queensland. Thereafter, funds were automatically transferred from NPF’s pooling account to the mortgage offset account with those funds then being transferred back to NPF’s holding account every Thursday.
- [5] Maizey and Ryan also operate an online cash flow management system called Easyfee through a corporate entity Easyfee Pty Ltd ACN 130 760 075. Easyfee also registered clients to use direct debits facilities in the operation of their business.
- [6] Easyfee has two accounts with BOQ. One of those accounts is operated to facilitate the Easyfee direct debits and credits for clients that are registered with Easyfee. Between 19 May 2011 and 28 June 2011, it is alleged that a registered client of Easyfee entered details of approximately 40 customers into Easyfee and scheduled debits into each customer’s account. Payments were made in accordance with those requests. It is alleged that those payments were unauthorised. As a result, BOQ received claims from banks requesting refunds of unauthorised direct debits in respect of Easyfee.

- [7] On 28 July 2011, BOQ suspended a number of accounts including NPF's pooling account and mortgage offset account. As a consequence of the relevant accounts being frozen, NPF can no longer trade.

The application

- [8] NPF contends that the moneys held in the suspended accounts are arguably trust moneys as NPF received any tax refund on trust on behalf of, at least, the relevant taxpayer. Having regard to its concern as to a co-mingling of the trust funds with other moneys with the establishment of the mortgage offset account, NPF contends it is appropriate for an impartial controller of the funds to be appointed to make rational business decisions in relation to those funds. A court may appoint a receiver of trust property where that is necessary for the wellbeing of the trust. Application can be made pursuant to the inherent jurisdiction of the Court.¹
- [9] Where an executor or trustee is in doubt as to the course of action to be adopted, it is entitled to seek the opinion of the Court as to what it should do.² On an originating summons seeking such a direction, a court is not bound to investigate the evidence in order to make a finding that a proposed proceeding will or will not be successful. It has merely to determine whether or not the proceedings should be taken.³ However, the matter should be sufficiently investigated to determine whether or not the proceedings would be fruitless.⁴
- [10] Section 96 of the *Trusts Act* provides:
- “96 Right of trustee to apply to court for directions
- (1) Any trustee may apply upon a written statement of facts to the court for directions concerning any property subject to a trust, or respecting the management or administration of that property, or respecting the exercise of any power or discretion vested in the trustee.
- (2) Every application made under this section shall be served upon, and the hearing thereof may be attended by, all persons interested in the application or such of them as the court thinks expedient.”
- [11] In circumstances where NPF is no longer able to trade, and there is reasonable grounds to assert that funds the subject of the suspended accounts are, at least in

¹ *Uniform Civil Procedure Rules*, rr 267-272.

² *Re Atkinson deceased* [1971] VR 612 at 615.

³ *Fitzgerald v Smith* (1889) 15 VLR 467.

⁴ *Re Atkinson deceased* at 615.

part, trust funds held by NPF, it is appropriate for NPF to make application to the Court for the appointment of a receiver to ensure impartial decisions may be made in respect of future steps in relation to the moneys held in the suspended accounts.

[12] Having regard to the potential beneficiaries of those trust funds and, the possible consequences of any orders made in relation thereto, a copy of any such application and the supporting affidavits should be served on Bank of Queensland Limited, and all accountants who were clients of the EasyTrust scheme.

[13] I direct:

1. NPF should make application for the appointment of receivers to collect, get in and receive funds deposited in the Bank of Queensland accounts numbers 11476936 and 21458361 in the name of the applicant:
 - (a) to apply those funds in payment of the taxpayers tax refunds listed in Exhibit BSM-38 to the affidavit of Bruce Stephen Maizey filed herein; and
 - (b) to apply the balance of those funds in payment of the accountants fees listed in Exhibit BSM-11 to the affidavit of Bruce Stephen Maizey filed herein.
2. A copy of any such application and the supporting affidavits should be served on Bank of Queensland Limited, and all accountants who were clients of the EasyTrust scheme.