

# SUPREME COURT OF QUEENSLAND

CITATION: *The Public Trustee of Queensland as Litigation Guardian for TAA v Ban* [2012] QCA 85

PARTIES: **PUBLIC TRUSTEE OF QUEENSLAND as litigation guardian for TAA**  
(applicant)  
v  
**HAJNAL DAHLIA BAN**  
(respondent)

FILE NO/S: Appeal No 105 of 2012  
SC No 13246 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application to Strike Out – Further Reasons

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Orders and reasons delivered ex tempore on 8 March 2012  
Further reasons delivered on 5 April 2012

DELIVERED AT: Brisbane

HEARING DATE: 8 March 2012

JUDGES: Muir and Chesterman JJA and Daubney J  
Judgment of the Court

ORDER: **Delivered ex tempore on 8 March 2012:**

- 1. If the respondent fails to file and serve an amended Notice of Appeal and an Outline of Argument before 4 pm on Friday 16 March 2012, then the respondent's appeal stands dismissed without further order and it is ordered that the respondent pay the applicant's costs of and incidental to the appeal.**
- 2. The respondent pay the applicant's cost of and incidental to this hearing on an indemnity basis.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – JUDGMENTS AND ORDERS – OTHER MATTERS – where the respondent lodged an appeal but did not comply with timelines with respect to filing Outline of Argument – where the respondent was given an extension of time by the registry within which to file Outline of Argument – where this Court gave the applicant a further extension within which to file Outline of Argument and an Amended Notice of Appeal – where the respondent did not comply with that

timeframe – where the applicant brought an application to strike out the respondent’s appeal for want of prosecution – whether the respondent should be granted a further extension – whether the respondent’s appeal should be struck out

*Uniform Civil Procedure Rules 1999 (Qld), r 5, r 775*

COUNSEL: A P J Collins for the applicant  
The respondent appeared on her own behalf

SOLICITORS: The Official Solicitor of the Public Trustee (Qld) for the applicant  
The respondent appeared on her own behalf

**THE COURT:**

- [1] This Court ordered on 8 March 2012 that:
1. If the respondent fails to file and serve an amended Notice of Appeal and an Outline of Argument before 4 pm on Friday 16 March 2012, then the respondent’s appeal stands dismissed without further order and it is ordered that the respondent pay the applicant’s costs of and incidental to the appeal; and
  2. The respondent pay the applicant’s costs of and incidental to this hearing on the indemnity basis.
- [2] These are the reasons for the first of those orders. Our reasons for making the costs order were given ex tempore on 8 March 2012.
- [3] On 8 December 2010, the applicant as litigation guardian for T commenced proceedings in the Supreme Court claiming declarations and other relief against the respondent and her husband in respect of a property owned, or formerly owned, by T at Park Ridge, alleging that the balance proceeds of sale of the property were held in trust by the respondent and her husband for T. It was alleged that T, to the knowledge of the applicant, lacked the capacity to deal with his property and that the respondent, as T’s attorney under a power of attorney, dealt with the subject property in circumstances in which her interests conflicted with her duty to T. The respondent counterclaimed for a declaration that she and T were joint tenants of land at Greenbank by operation of an unregistered transfer by T of the land executed by T.
- [4] The applicant sought summary judgment on its claim and on the counterclaim. On 7 December 2011 Boddice J gave summary judgment on the claim, but declined to give summary judgment on the counterclaim.
- [5] The respondent filed an appeal against Boddice J’s decision on 4 January 2012. She was informed by letter from the Registry of this Court dated 5 January 2012 that her Outline of Argument was required to be filed under Practice Direction 2 of 2010 by 1 February 2012. An extension until 7 February 2012, sought by the respondent, was granted. When no Outline of Argument was filed on 7 February, the applicant wrote to the respondent advising that the matter would be “listed... for appropriate orders”. Also on 7 February, the respondent, in an email to the Registry, sought a further extension of time until 20 February 2012. She wrote, “I am confident that I will be able to meet this timeframe and to have everything in by then”.

- [6] On 17 February 2012, the matter was mentioned before Muir JA who ordered that any amendment to the Notice of Appeal be filed within 10 days and that the respondent's Outline of Argument also be filed within 10 days. The respondent did not file an amended Notice of Appeal or Outline of Argument and the applicant filed an application to have the appeal struck out or dismissed for want of prosecution under r 775 of the *Uniform Civil Procedure Rules*.
- [7] When the matter came on for hearing on 8 March 2012, the respondent, for reasons best known to herself, still had not filed an amended notice of appeal or an outline of submissions. Nor did she attempt to provide such documents to the Court or even give a clear estimate, let alone undertaking, as to when such documents would be finalised.
- [8] The respondent sought to excuse her non-performance on four grounds. She said that her former solicitor had ceased to act for her on 11 November 2011 and that she had been unable to obtain relevant documents from him. She claimed that a considerable amount of her time and energy had been consumed in attempting to obtain documents from other sources. The second cause of difficulty identified was her defence of proceedings in the Magistrate's Court in Beenleigh in which she was defending unspecified charges connected with her office as a local councillor. That trial, the Court was told, took place a little over a week ago. The third ground had to do with the remaining part of the proceedings before Boddice J, but that matter has not been set down and the respondent is not presently required to comply with any orders or directions in that regard. The remaining cause of difficulty identified was the alleged complexity of the issues involved in the appeal and the delay experienced by the respondent in obtaining unspecified textbooks from entities such as Amazon.com.
- [9] Notwithstanding the respondent's alleged difficulties in finalising her Notice of Appeal and Outline of Argument, she prepared and filed on 7 March 2012 a 12 page Notice of Appeal against Muir JA's 17 February orders. In that Notice of Appeal she explained why, in her view, three Judges of this Court should be disqualified from hearing her appeal against the 17 February orders. The material relied on by the respondent and her explanations for delay do not make out a convincing case that the respondent was unable, despite the use of reasonable endeavours, to comply with the subject orders and directions.
- [10] The respondent, despite being given extensions of time, has persistently and without reasonable excuse, failed to fulfil her obligations under r 5 of the *Uniform Civil Procedure Rules* and has breached orders of this Court. The applicant is being put to unnecessary inconvenience and expense and, as the applicant's counsel pointed out, the estate of T is being diminished. The respondent is a councillor and has been admitted as a barrister. There does not appear to be any reason why she cannot focus her mind and produce an amended Notice of Appeal and an Outline of Argument. If she cannot do that the consequences should be borne by her, not the applicant.