

COURT OF APPEAL

GOTTERSON JA

**Appeal No 4289 of 2012
SC No 6655 of 2010**

JACQUELINE PATRICIA MULHERN

Applicant

v

**BANK OF QUEENSLAND LIMITED
ACN 009 656 740**

Respondent

BRISBANE

DATE 07/06/2012

JUDGMENT

GOTTERSON JA: I propose to deal with this application now and give the following reasons and determination of it.

In proceedings 5472 of 2010 the plaintiffs obtained Mareva orders in respect of an amount of \$479,466 credited to the account of Mrs Jacqueline Mulhern with Bank West. Those orders were obtained on the 25th of May 2010. On the 8th of August 2011 the frozen funds were paid into Court by Bank West. The plaintiffs who had obtained the Mareva orders subsequently commenced proceedings against Mrs Mulhern for declaratory and other relief. They are proceedings 6655 of 2010. Of the six plaintiffs, five of them are Mulhern companies to which receivers and managers have been appointed. The sixth plaintiff is Bank of Queensland.

It is unnecessary for determination of the application currently before the Court to detail the claims pursued in proceedings 6655 of 2010 by claim or by way of counterclaim. The

plaintiff supplied the summary judgment in those proceedings and on the 9th of May 2012 Justice Douglas gave judgment in their favour. He made orders that day in those proceedings to give effect to that judgment. Those orders included dismissal of the counterclaim.

On the same day, his Honour made orders in proceedings 5472 of 2010 and importantly, for the current application, those orders included the following order, "The total amount held by the Court in respect of the funds paid into Court, pursuant to the order of Justice Douglas in proceedings 5472 of 2010 dated 22nd of July 2011 be paid to John Richard Park and Kerri Anne Springfield in their capacity as receivers and managers of the first to fifth applicants.

Notwithstanding, Mrs Mulhern has filed this application in appeal proceedings 4289 of 2012. The application is for an order that the moneys paid into Court, together with accretions, be paid to her. The moneys, the subject of the application, are, of course, the same moneys which the Court has already ordered be paid to the receivers and managers.

The appeal was commenced by Notice of Appeal filed on the 15th of May 2012. It details the judgment appealed against as that given on the 9th of May 2012 in proceedings 6655 of 2010. There is no appeal against the orders made on the same date in proceedings 5472 of 2010.

It is apparent to me that Mrs Mulhern's application cannot be granted. In the first place, to grant it would require the making of an order which would contradict an order of the Court made on the 9th of May 2012 which has not been rescinded or varied and from which no appeal has been filed.

Secondly, even if that order had been appealed the Court would not, prior to the determination of the appeal, make another order which would frustrate the operation of the appealed order in the event that the appeal failed. That is precisely what would happen here were the order made on the 9th of May 2012 in proceedings 5472 of 2010 to have been appealed and were that appeal then in due course to fail.

This application is, for these reasons, refused.