

SUPREME COURT OF QUEENSLAND

CITATION: *MTP v PAH (No 2)* [2012] QSC 368

PARTIES: **MTP**
(applicant)

v

PAH
(respondent)

FILE NO/S: 3 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 23 November 2012

DELIVERED AT: Brisbane

HEARING DATES: 25 October and 7 November 2012

JUDGE: Atkinson J

ORDERS:

- 1. The respondent pay the applicant's costs of this application to be assessed.**
- 2. The respondent pay interest in the sum of \$10,778.04 on the judgment sum.**
- 3. Until such time as the respondent satisfies the judgment made on 19 September 2012 and the orders for costs made on 19 September and 22 November 2012, the respondent's real property situate at:**
 - (i) 16 Dirk Hartog Place, Hollywell and being described at Lot 57 on RP 160160, Title Reference 15757217;**
 - (ii) 2 Oak Street, Nerang and being Lot 132 on RP 115825, Title Reference 14138196;**
 - (iii) 118-120 Anzac Avenue, Hillcrest and being Lot 1 on RP 140777, Title Reference 15265019; and**
 - (iv) 122-124 Anzac Avenue, Hillcrest and being Lot 3 on RP 140777, Title Reference 15265021****be charged in favour of the applicant.**
- 4. The applicant have liberty to lodge caveats over the respondent's real property situate at:**
 - (i) 16 Dirk Hartog Place, Hollywell and being described at Lot 57 on RP 160160, Title Reference 15757217;**

- (ii) **2 Oak Street, Nerang and being Lot 132 on RP 115825, Title Reference 14138196;**
- (iii) **118-120 Anzac Avenue, Hillcrest and being Lot 1 on RP 140777, Title Reference 15265019; and**
- (iv) **122-124 Anzac Avenue, Hillcrest and being Lot 3 on RP 140777, Title Reference 15265021.**

CATCHWORDS: PROCEDURE — JUDGMENTS AND ORDERS — COSTS — INDEMNITY COSTS — OFFERS TO SETTLE — where general position for de facto property disputes is that each party bears their own costs — where court required to consider offers to settle made under the UCPR — where UCPR r 360 provides costs sanctions in the case of offers to settle open for no less than 14 days — where offer to settle made by plaintiff no less favourable than outcome — where offer to settle only open for five days — whether offer to settle made under UCPR — whether indemnity costs should be awarded

PROCEDURE — JUDGMENTS AND ORDERS — INTEREST ON JUDGMENTS — RATE OF INTEREST — where respondent ordered to pay a sum as a result of de facto property dispute — whether interest should be ordered and in what amount

PROCEDURE — JUDGMENTS AND ORDERS — SECURITY — where respondent ordered to pay a sum as a result of de facto property dispute — where respondent had history of circumventing court orders — whether security for judgment debt should be ordered

MTP v PAH [2012] QSC 326, related

Property Law Act 1974 (Qld), ss 333(1)(e), 341(4)(f)

Uniform Civil Procedure Rules 1999 (Qld), rr 355(1), 360(1)

Civil Proceedings Act 2011 (Qld), ss 58, 59

Land Title Act 1994 (Qld), s 122(1)(e)

COUNSEL: P Baston for the applicant
P Hackett for the respondent

SOLICITORS: Lynn & Rowland Lawyers for the applicant
Lillas & Loel for the respondent

[1] On 25 October 2012, I delivered reasons for orders made by me on 19 September 2012 at the end of the oral hearing of this matter proceeding under Part 19 of the *Property Law Act* 1974 (Qld).¹ The principal order was that the respondent, PAH pay the applicant, MTP, \$140,000 within 30 days. A consequential order was made setting aside paragraph 3(g) of an order made by this court on 24 December 2012. I ordered that the respondent pay the applicant's costs of and incidental to the

¹ See *MTP v PAH* [2012] QSC 326.

originating application and sought further submissions as to any further consequential orders which should be made to ensure the effectiveness of the orders which I had made.

- [2] I indicated when handing down the reasons for my decision on 25 October 2012 that the parties should deliver written submissions as to the orders they sought and the reasons for seeking or opposing the orders sought by certain specified dates and that I would proceed without the need for further oral hearing. Written submissions have been received from the applicant but the respondent has indicated that he does not intend to make any submissions.

Costs

- [3] The first matter raised in the applicant's submissions was an application for an order that the respondent pay the applicant's costs on an indemnity basis from 8 June 2012. As indicated I have already ordered that the respondent pay the applicant's costs. The application for costs on an indemnity basis is made relying, in addition to the matters previously raised, upon s 341(4)(f) of the *Property Law Act* which requires the court to consider, on an application for costs in a proceeding under Part 19 of that Act, "whether any party made an offer to settle under the *Uniform Civil Procedure Rules* 1999 ('UCPR') and the terms of the offer."
- [4] The reference to the UCPR is a reference to Part 5 of Chapter 9, rr 252-265. In this case, the legal representative for the applicant sent an offer to settle her claim by facsimile transmission to the legal representative for the respondent on 8 June 2012. Rule 355(1) requires that, in an offer made under this part, a party must specify "a period, ending not less than 14 days after the day of service of the offer, during which the offer is open for acceptance." Such an offer can only be withdrawn within the specified period by leave of the court. Rule 360(1) provides that if a plaintiff makes such an offer to settle, it is not accepted by the defendant, and the plaintiff obtains a judgment no less favourable than the offer, then the court, unless persuaded otherwise by the defendant, must, subject to being satisfied that the plaintiff was willing and able to carry out the proposed offer, order indemnity costs against the defendant.
- [5] However, in this case the offer to settle was in its terms only open for a period of five days, i.e. until 13 June 2012. Accordingly it was not an offer to settle under Part 5 of Chapter 9 of the UCPR and provides no additional reason to vary the order for costs made on 25 October 2012. I therefore decline to order indemnity costs.

Interest

- [6] The applicant also sought the payment of interest on the amount of \$140,000, the amount of the judgment sum, from 14 December 2011 until 19 September 2012 at the rate of ten per cent per annum. 14 December 2011 was the date of filing of the application for variation of the orders made on 24 December 2010 and 19 September 2012 was the date when the relevant orders were made. It is appropriate

to make an order for interest pursuant to s 58 of the *Civil Proceedings Act* 2011 (Qld) which empowers the court to order interest on the judgment sum for all or part of the period between the date when the cause of action arose and the date of judgment. The amount of interest is in the discretion of the court. However, some guidance is provided by Practice Direction 21 of 2012 which provides that when computing interest under the following section, s 59 of the *Civil Proceedings Act*, the rate of ten per cent should be used. I therefore propose to order interest as sought in the sum of \$10,778.04.

Security

- [7] The applicant also sought orders that:
- "Until such time as the Respondent satisfies the judgment made 19 September 2012 and any orders for costs in these proceedings the respondent's real property situate at:
- (i) 16 Dirk Hartog Place, Hollywell and being described at Lot 57 on RP 160160, Title Reference 15757217;
 - (ii) 2 Oak Street, Nerang and being Lot 132 on RP 115825, Title Reference 14138196;
 - (iii) 118-120 Anzac Avenue, Hillcrest and being Lot 1 on RP 140777, Title Reference 140777; and
 - (iv) 122-124 Anzac Avenue, Hillcrest and being Lot 3 on RP 140777, Title Reference 140777
- be charged in favour of the applicant and FURTHER THAT the Applicant have liberty to lodge a caveat over each of these properties."
- [8] Those orders are sought to secure the payment of the \$140,000 ordered to be paid by the order of 19 September 2012 and any assessment of costs of these proceedings. The court's power to make such orders is found in s 333(1)(e) of the *Property Law Act* which allows the court to "order that payment of an amount ordered to be paid be wholly or partly secured in a way the court directs."
- [9] Given the respondent's history of circumvention or disobedience of court orders, it appears unlikely that he will pay the amount ordered by the court on 19 September 2012 unless the court orders security over his real property for that amount. In addition, given his history, unless security is ordered over each of his real properties it appears likely that he will seek to avoid the effect of that order by not dealing with the only property over which security is ordered. It is in these circumstances appropriate to order that, until such time as the respondent satisfies the judgment made on 19 September 2012 and the orders for costs made in these proceedings, his real property be charged in favour of the applicant and that the applicant have liberty to lodge a caveat over each of these properties. The caveats should be lodged under s 122(1)(e) of the *Land Title Act* 1994 (Qld) as the applicant has the benefit of this order restraining the registered proprietor from dealing with the lot without taking into account the charge in favour of the applicant.

Orders

1. The respondent pay the applicant's costs of this application to be assessed.
2. The respondent pay interest in the sum of \$10,778.04 on the judgment sum.
3. Until such time as the respondent satisfies the judgment made on 19 September 2012 and the orders for costs made on 19 September and 22 November 2012, the respondent's real property situate at:
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 - (iv) 122-124 Anzac Avenue, Hillcrest and being Lot 3 on RP 140777, Title Reference 15265021be charged in favour of the applicant.
4. The applicant have liberty to lodge caveats over the respondent's real property situate at:
 - (i) 16 Dirk Hartog Place, Hollywell and being described at Lot 57 on RP 160160, Title Reference 15757217;
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