

# SUPREME COURT OF QUEENSLAND

CITATION: *King v King* [2013] QSC 107

PARTIES: **PAUL BERNHARD KING**  
(plaintiff/applicant)  
v  
**MARK REINHARD KING**  
(defendant/respondent)

FILE NO/S: 12559 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 16 April 2013

DELIVERED AT: Brisbane

HEARING DATE: 16 April 2013

JUDGE: Atkinson J

ORDER: **The application is dismissed.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER RULES OF COURT – JUDGMENTS AND ORDERS – OTHER MATTERS – where the matter was deemed resolved as a result of an order made on a case flow review – where *Practice Direction 17 of 2012* para 8 outlines the procedure for reactivating a matter that has been deemed resolved – where the plaintiff made an application for the proceeding to be reactivated – where the questions to be considered were the parties’ capacity to prepare for the trial in a timely way or at all and if a trial was required for the resolution of the proceeding – where there was issue estoppel – whether the proceeding should be reactivated

*Practice Direction 17 of 2012*

*Mark Reinhard King v Joanna King and Leonhard King*  
[2009] FMCAfam 986, considered  
*King v King*, unreported, de Jersey CJ, SC No 11583 of 2010,  
SC No 12559 of 2010, 9 March 2011, considered

COUNSEL: The applicant appeared on his own behalf  
S F Miotti (*sol*) for the respondent



HER HONOUR: There is an application before me to re-activate matter number 12559 of 2010. That application is made pursuant to the practice set out in paragraph 8 of Practice Direction No 17 of 2012 (PD17/2012) which deals with what is required to restore or re-activate matters that have been deemed resolved.

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This matter was deemed resolved as a result of a self-executing order made by me on 9 December 2011. That self-executing order was the subject of an order taken out that the matter was deemed resolved on 27 July 2012.

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The matter has a long and complex history which is set out in the affidavit of the applicant, Paul King, who is a brother of the defendant, Mark King.

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It is not necessary to go through all of those details, and perhaps it is true that the matter was deemed resolved because the applicant is self represented and he found Court procedure particularly difficult.

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So I turn to two questions which seem to me unfortunately to militate against granting the application to re-activate. The first is the parties' capacity to prepare for the trial in a timely way or indeed at all. The statement of claim that was filed by the plaintiff was struck out on 16 February 2011 by Justice Applegarth. Not only did he strike out the statement of claim which was filed on 19 November 2010, he further ordered that any amended statement of claim not be filed

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without leave of the Court, and any application for such leave  
be filed and served on seven clear days notice.

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He further ordered that the proceeding be stayed pending  
compliance by the plaintiff with the rules of pleading.

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He made an order that the parties be at liberty to resolve the  
issues and dispute by mediation, and further ordered that any  
application not be filed until they had participated in any  
such mediation.

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I ordered on 9 December 2011 that any application to be  
absolved from that requirement to engage in mediation or any  
application for leave to file an amended statement of claim be  
filed by 31 January 2012, or the matter be deemed resolved.  
Neither application was properly made, and so that is how the  
matter came to be deemed resolved.

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There is no draft statement of claim before me, and I have not  
formed the view that the plaintiff has the capacity to prepare  
the case for trial in accordance with the rules of pleading.

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Perhaps more importantly, it is my view that a trial is not  
required for resolution of this proceeding.

The "matter in question" in this proceeding, as explained to  
me by the plaintiff, the very issue, was resolved by Federal  
Magistrate Wilson, as he then was, in the matter of *Mark  
Reinhard King v Joanna King and Leonhard King*, of whom the

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plaintiff is the personal representative who was joined as  
second respondent in that matter in the Federal Magistrates  
Court. And the issue of whether or not there was a trust over  
this property in favour of the second respondent was resolved  
in that case. That is the very issue that the plaintiff seeks  
to litigate in this case.

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Even further difficulty is provided for the plaintiff by the  
fact that not only am I of the view that there is issue  
estoppel with regard to that issue because of that judgment,  
but in fact there has been a finding to that effect by the  
Chief Justice in his decision in this and a related matter.  
That decision is in the matter of *King v King* and is a  
decision in file numbers SC 11583 of 2010 and in this matter  
SC 12559 of 2010.

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In that case, at paragraph 8, the Chief Justice held: "I  
should add that in any case, the determination of the Federal  
Magistrate does in my view create an issue estoppel binding  
Mark King and Paul King, with the latter, as executor of the  
estate, being bound by the determination made against his  
father while his father was alive."

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Accordingly, in my view, given that there is issue estoppel,  
and there has been a demonstrated inability to plead the case,  
the occasion has not arisen to re-activate the matter, and the  
matter should remain deemed resolved.

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I therefore dismiss the application.

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HER HONOUR: So the order is the application is dismissed.

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