

SUPREME COURT OF QUEENSLAND

CITATION: *Perpetual Ltd v Latham & Anor* [2015] QSC 190

PARTIES: **PERPETUAL LIMITED ACN 000 431 827**

(plaintiff)

and

COURTNEY MAREE LATHAM

(first defendant)

and

GLENDAL LEA LATHAM

(second defendant)

FILE NO/S: BS4415/15

DIVISION: Trial Division

PROCEEDING: Application under ch13 Pt 6 of the UCPR

DELIVERED ON: 29 June 2015

DELIVERED AT: Brisbane

HEARING DATE: 23 June 2015

JUDGE: Jackson J

ORDER: **The order of the court is that:**

- 1. The requirement for personal service pursuant to rule 105 of the *Uniform Civil Procedure Rules 1999* (Qld) (“UCPR”) be dispensed with for the First Defendant.**
- 2. Pursuant to rule 116 of the UCPR, in lieu of personal service, sealed copies of the Claim and Statement of Claim filed on 5 May 2015 and a sealed copy of this order (“Documents”) be served on the First Defendant by:-**
 - a) Posting the Documents by registered post to Courtney Maree Latham at 37 Gloucester Road, Buderim QLD 4556; and**
 - b) Posting the Documents by pre-paid post to Courtney Maree Latham at 37 Gloucester Road, Buderim QLD 4556.**
- 3. Service of the Documents be deemed to have been effected four (4) days after the Documents have been served in accordance with orders 2(a) – (b)**

above.

4. That the plaintiff's costs of this application be the plaintiff's costs in the proceeding.

5. Such further or other orders as the Court deems fit.

PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER THE UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – SERVICE – where the applicant sought to personally serve the originating process on six separate occasions on the first defendant – where the applicant was unsuccessful in personally serving the first defendant – whether the court should order substituted service on the first defendant

CATCHWORDS: *Uniform Civil Procedure Rules 1999 (Qld)*, rr 105, 106, 116, 489, 491

COUNSEL: Hearing on the papers

SOLICITORS: HWL Ebsworth Lawyers for the plaintiff

- [1] **Jackson J:** Application is made under r 489 of the *Uniform Civil Procedure Rules 1999 (Qld)* (“UCPR”) for the application to be decided without an oral hearing. In the circumstances of this case, under UCPR r 489(2) the court must decide the application without an oral hearing unless under UCPR r 491 the court considers it inappropriate to do so. There is no reason why it is inappropriate to do so.
- [2] The application is for substituted service of the originating proceeding under UCPR r 116. The proceeding was started by claim. The claim is for possession of land and for debt.
- [3] UCPR r 105(1) requires that the originating process be served personally on the defendants in accordance with UCPR r 106.
- [4] However, under UCPR r 116 if for any reason it is impracticable to serve a document in a way required under ch 4 of the UCPR the court may make an order substituting another way of serving the document.
- [5] The applicant has retained agents who have attempted to personally serve the originating process on the first defendant. There is evidence that the first defendant lives at 37 Gloucester Road, Buderim 4556. On 11 May 2015, a person at that address when the applicant's agent attended informed the agent that the first defendant resided there but was not home. On 22 May 2015, a solicitor for the applicant spoke to the second defendant who informed her that the first defendant resided at 37 Gloucester Road, Buderim and that the first defendant had informed the second defendant that an agent on behalf of the applicant had been to the property to try and serve documents on her.
- [6] The applicant's agent has attempted to serve the originating process personally on the first defendant at her residence on six separate occasions on 8, 11, 15, 18 and 25 May 2015 and on 1 June 2015. He has made several attempts to make arrangements

to attend when the first defendant might be home by speaking to people at the premises, leaving cards and by calling the first defendant's mobile phone number.

- [7] In the circumstances I find that it is impracticable to serve the documents in the way required under r 105.
- [8] Further, I find that it is more probable than not that if the documents are served by post they will come to the attention of the first defendant.
- [9] Accordingly, in my view, it is appropriate that the requirements for personal service pursuant to r 105 of the UCPR be dispensed with and that in lieu of personal service, sealed copies of the claim and statement of claim together with a sealed copy of this order should be served on the first defendant by post pursuant to UCPR 116.
- [10] As well, in my view, service should be deemed to be effected four days after the documents are served by posting them. I will make an order in terms of the draft order that was provided with the applicant's submissions, except that the order for costs will be that the costs of the application to be the plaintiff's costs in the proceeding.