

# SUPREME COURT OF QUEENSLAND

CITATION: *Sutherland & Anor v Jot Property Solutions Pty Ltd* [2015]  
QSC 249

PARTIES: **RODERICK MACKAY SUTHERLAND**  
and  
**TRAJAN JOHN KUKULOVSKI**  
**AS LIQUIDATORS OF BLUECHIP PROPERTY**  
**SERVICES PTY LTD (IN LIQ) (ACN:108514245)**  
(Plaintiffs)  
v  
**JOT PROPERTY SOLUTIONS PTY LTD**  
**(ACN:132272210)**  
(First Defendant)  
and  
**JOT INVESTMENT HOLDINGS PTY LTD**  
**(ACN 137828507) IN ITS OWN RIGHT AND AS**  
**TRUSTEE OF THE JPI UNIT TRUST**  
(Second Defendant)  
and  
**TARA MAREE SMYTH AS TRUSTEE OF THE J&T**  
**SMYTH FAMILY TRUST**  
(Third Defendant)  
and  
**KERRY GRAHAM HOLDINGS PTY LTD**  
**(ACN:143732772) AS TRUSTEE OF THE KERRY**  
**GRAHAM TRUST**  
(Fourth Defendant)

FILE NO. SC 58 of 2014

DIVISION: Trial

PROCEEDING: Application

ORIGINATING  
COURT: Supreme Court at Mackay

HEARING DATE: 18 May 2015

DELIVERED ON: 25 August 2015

DELIVERED AT: Cairns

JUDGE: Henry J

ORDERS:

1. **The statement of claim is struck out.**
2. **I will hear the parties at 10.00 am on 16 October 2015 as to what further orders should be made (leave is given for parties to appear by telephone or video link).**

**CATCHWORDS:** CORPORATIONS – WINDING UP – CONDUCT AND INCIDENTS OF WINDING UP – AVOIDANCE OF DISPOSITIONS OF PROPERTY – APPLICATION BY LIQUIDATOR – where the plaintiff liquidator makes an application pursuant to s 228 of the *Property Law Act 1974* (Qld) for declarations and orders to set aside and reverse the sale of the defendants’ businesses long prior to liquidation – whether the plaintiff has standing to bring such an action – whether the plaintiff liquidator comes within the meaning of “person prejudiced by the alienation of the property” under s 228 – whether the plaintiff has standing to bring an action pursuant to s 477(2) of the *Corporations Act 2001* (Cth) – whether there was causal connection between the transactions and the plaintiff’s alleged prejudice

*Corporations Act 2001* (Cth) s 477, s 530, s 536(1)(b), s 588, *Property Law Act 1974* (Qld) s 228

*Chen v Marcolongo* (2009) 260 ALR 353, cited  
*Christianos v Aloridge* (1995) 59 FCR 273, cited  
*Kern Consulting Group Pty Ltd & Anor v Opus Capital Ltd* [2014] QCA 111, cited  
*Koutavas v Struthers* [2011] FCA 322, cited  
*Re Lawrence Waterhouse Pty Ltd (in Liq) Shaw v Minsden Pty Ltd* [2011] NSWSC 964, cited  
*Re McGrath & Anor* (2010) 78 ASCR 405, cited

**COUNSEL:** A I O’Brien for the Applicant First, Second and Third Defendants  
P O Land for the Respondent Plaintiff

**SOLICITORS:** McKays Solicitors for the Applicant First, Second and Third Defendants  
Morrow Petersen Solicitors for the Applicant Fourth Defendant  
The Respondent Plaintiff briefed counsel directly

- [1] The defendants seek to end the proceeding against them early on the basis that the plaintiffs lack standing to bring the proceeding (“the lack of standing argument”). This the first, second and third defendants seek to do through an application to have the claim set aside or alternatively have the statement of claim struck out. The fourth defendant seeks to do so by applying to have the statement of claim struck out or in the alternative seeking a declaration that the plaintiff lacks standing to prosecute the proceedings.
- [2] In the event their lack of standing argument fails the first, second and third defendants also seek orders for security for costs and for the undertaking of an enquiry by the

court into the actions of the plaintiff as liquidators pursuant to s 536(1)(b) of the *Corporations Act 2001* (Cth).

### **Background**

- [3] The plaintiffs liquidators of Blue Chip Property Services Pty Ltd (“Blue Chip”) claim various forms of relief, essentially seeking to declare void and reverse the consequences of the sale and transfer of three former businesses of Blue Chip to the first defendant on 1 December 2008, namely:
- (1) Real Property Agents Northern Beaches (“the Northern Beaches business”);
  - (2) Real Property Agents Moranbah and Coalfields (“the Moranbah and Coalfields business”);
  - (3) Real Property Agents Sarina (“the Sarina business”).
- [4] The claim as against the other defendants similarly seeks to reverse the benefits which had allegedly flowed to them in connection with the transfers and consequential events.
- [5] The claim and statement of claim are lengthy. The factual background pleaded in the statement of claim is in summary as follows:
- (1) Blue Chip’s sole director during the relevant era was Brett John Thorne. He was lessee of the various premises from which the three businesses operated. He was also director of Thorne Developments Pty Ltd (“Thorne Developments”) which holds 90% of Blue Chip’s shares.
  - (2) In June 2008 Blue Chip was advised that the Australian Tax Office (“ATO”) intended to commence proceedings against it to recover tax. On 17 July 2008 the first defendant, Jot Property Solutions Pty Ltd, was incorporated, allegedly at the instigation of Mr Thorne. Ms Smyth, the 22 year old manager of the Real Property Agents Moranbah and Coalfields business, became the first defendant’s director and shareholder.
  - (3) By November 2008 Blue Chip owed the ATO \$350,000.
  - (4) On 1 December 2008 Blue Chip entered into contracts selling to the first defendant:
    - (a) the Northern Beaches business for \$65,000;
    - (b) the Moranbah and Coalfields business for \$447,322; and
    - (c) the Sarina business for \$30,000.
 The value of the Moranbah and Coalfields business was not less than \$2.5 million, which Blue Chip, the first defendant and Ms Smyth all knew.
  - (5) In each instance the contract was subject to finance being obtained by 1 June 2009 and settlement was stipulated to occur on 15 June 2009. The contracts included provision for assignment of the leases of the premises from which the businesses were conducted.
  - (6) On 1 December 2008 Blue Chip also arranged for the transfer to the first defendant of the registered business names of “Real Property Agents Moranbah” and “Real Property Agents Northern Beaches”. Further on the same date Blue Chip and the first defendant entered into a vendor finance agreement under which \$515,006, the combined total of the sale prices less deposits, would be financed by

Blue Chip without interest to be repaid at the rate of \$13,000 per month.

- (7) The deposits were not paid to Blue Chip and no finance repayments were made to Blue Chip. Instead any monies due under the vendor finance agreement were paid to Mr Thorne at his request, to him or other entities or persons nominated by him.
- (8) After 27 May 2009 the first defendant sold the Sarina business. On 20 June 2009 the second defendant was incorporated at the instigation of Mr Thorne, with its sole director and shareholder becoming Ms Smyth. Between 22 June 2009 and 18 May 2010 the first defendant granted the second defendant a licence to operate and manage the Northern Beaches business and the Moranbah and Coalfields business.
- (9) On 14 January 2010 a judgment was entered in favour of Grant Long in the District Court against Blue Chip for \$65,587.22. On 13 April 2010 the ATO served Blue Chip with a statutory demand for \$678,519.12.
- (10) On 18 May 2010 the third defendant was conceived when the J&T Smyth Family Trust was established and Ms Smyth became its trustee. The fourth defendant was also conceived on that date when the Kerry Graham<sup>1</sup> Trust was established with Brett Thorne as its sole beneficiary, Kerry Graham Holdings Pty Ltd was incorporated with Ms Smyth as its sole director and Kerry Graham Holdings Pty Ltd became trustee for the Kerry Graham Trust. Also on that date the JPI Unit Trust was established with the third and fourth defendants owning 20% and 80% of its units respectively and the second defendant became its trustee, transferring its assets to the trust.
- (11) On 28 July 2010 the Deputy Commissioner of Taxation applied for Blue Chip to be wound up. On 12 August 2010 Brett Thorne placed Blue Chip into voluntary liquidation and the plaintiffs were appointed voluntary administrators. On 27 August 2010 the Federal Court ordered that Blue Chip be wound up and the plaintiffs were appointed liquidators.

[6] In the premises of those paragraphs of the pleading which plead the conduct and events in respect of the sales of the Northern Beaches business, the Moranbah and Coalfields business and the Sarina business and the incorporation of the first and second defendants, the plaintiff alleges, “There has been an ‘alienation of property’ for the purposes of s 228 of the *Property Law Act 1974*.”

[7] Further in the premises of those paragraphs of the pleading which relate to the conduct and events pleaded up to 27 August 2010 when Blue Chip went into liquidation, including the payment of vendor finance amounts not to Blue Chip but to Mr Thorne or those nominated by him, the plaintiff alleges:

“83. ... [T]here has been “an intent to defraud creditors” for the purposes of s 228 of the *Property Law Act 1974*.

84. Each of the Deputy Commissioner of Taxation and Grant Edward Long is a “person prejudiced by the alienation of property” for the purposes of s 228 of the *Property Law Act 1974*.”

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<sup>1</sup> The names of Brett Thorne’s parents.

- [8] The plaintiff pleads a variety of other conduct and events after Blue Chip went into liquidation, apparently because those events are relevant to the relief sought. For example, the plaintiff alleges that on or about 14 January 2013 the following persons and entities entered into a unit sale agreement:
- (1) the fourth defendant as vendor;
  - (2) the third defendant as purchaser;
  - (3) Jason Smyth (husband of Ms Smyth), the first defendant, Ms Smyth in her own right and the third defendant as acquiring parties;
  - (4) the first defendant, fourth defendant and JPI (Qld) Pty Ltd as disposing parties;
  - (5) Craig Thorne and Suzanne Thorne as trustees.

Pursuant to the unit sale agreement the fourth defendant sold 80% of its units in the JPI Unit Trust to the third defendant for \$900,000 plus 10% interest, payable by instalments.

- [9] The relief sought is extensive and need not be summarised here. It is sufficient for present purposes to note the plaintiff seeks 21 declarations pursuant to s 228 of the *Property Law Act*, 10 orders pursuant to s 228 of the *Property Law Act* for the taking of accounts and a variety of associated orders, all premised on the success of the declaratory relief, requiring the taking of steps to pay amounts found due on the taking of the accounts and the transferring of various property to the plaintiff.

#### **The plaintiffs behind this action**

- [10] The action was initiated in the name of the two liquidators of Blue Chip. However, Roderick Mackay Sutherland has since resigned, preparatory to retiring from his profession. The other liquidator, Trajan John Kukulovski, a registered official liquidator, has continued in the role of liquidator of Blue Chip.<sup>2</sup>
- [11] Curiously in instituting proceedings the plaintiff's address for service was given as "c/- Thorne Developments of 19 Dennis Street South Mackay, as agent for the liquidators". Brett John Thorne has been an undischarged bankrupt since 26 March 2012. He ceased being a director of Thorn Developments on 5 September 2013, though he remains its sole shareholder. That shareholding would be vested in his trustee in bankruptcy.
- [12] The current director of Thorne Developments is Mr Patrick Casey of 19 Dennis Street South Mackay. His active role as author of various correspondence with the defendants' solicitors about the conduct of the proceeding, extending even to the form of a consent order, does not rest comfortably with the assertion of the liquidator that the only role delegated to Mr Casey was the task of filing the Claim and Statement of Claim.
- [13] The mysterious interest and role of Thorne Developments in this case is addressed in the affidavits of the liquidator and Mr Casey in two ways. Firstly it is asserted that Thorne Developments have lodged a written proof of debt, accepted by the liquidator for voting purposes, for \$1,000,000 based upon funds of Thorne Developments said to have been loaned by its previous director and sole shareholder Brett Thorne. This

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<sup>2</sup> No issue is taken by the defendants as to the propriety of this course. Where two liquidators are appointed s 530 *Corporations Act* allows any one of them to perform or exercise functions and powers.

alleged debt is not mentioned in any of the exhibited reports to creditors. Nor is Thorne Developments mentioned in that part of the pleadings which identify the persons allegedly prejudiced by the alienation of Blue Chip's property or indeed in any part of the pleadings.

- [14] Secondly it is deposed that Thorne Developments has entered into a written agreement with the liquidator to fund the litigation and Mr Casey has provided some form of written guarantee<sup>3</sup> in connection with the agreement. Neither document was exhibited, indeed privilege is claimed in respect of the guarantee. The agreement apparently contemplates that Thorne Developments will take 40% of the proceeds of any recovery after its costs have been paid. A resolution of the creditors' meeting of 13 April 2014 purported to authorise the liquidator at his discretion to enter into litigation funding facilities. That resolution is of doubtful validity given it was purportedly made pursuant to s 477(2B) of the *Corporations Act* but gave no approval per se to an agreement.
- [15] These unusual features of the case have relevance to the application for security for costs and to the application for the court to undertake an enquiry into the actions of the plaintiffs as liquidators of Blue Chip. As will be seen, it is unnecessary to determine those applications because of the apparently determinative significance of the lack of standing issue to the future of these proceedings

### **The lack of standing argument**

- [16] The relief sought in this proceedings is premised on declarations and orders sought to be made pursuant to s 228 of the *Property Law Act 1974 (Qld)*, which provides:
- “228 Voluntary conveyances to defraud creditors voidable**
- (1) Subject to this section, every alienation of property, made whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person prejudiced by the alienation of property.
  - (2) This section does not affect the law of bankruptcy for the time being in force.
  - (3) This section does not extend to any estate or interest in property conveyed for valuable consideration and in good faith to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.” (emphasis added)
- [17] The lack of standing argument turns on whether the plaintiff liquidator comes within the meaning in s 228(1) of “any person prejudiced by the alienation of property”.
- [18] The plaintiffs in this case are “Roderick Mackay Sutherland and Trajan John Kukulovski as liquidators of Blue Chip Property Services Pty Ltd (in Liq) (ACN:108514245)”. The broad powers of liquidators conferred by s 477 of the *Corporations Act 2001 (Cth)* include, at s 477(2) the power to:
- “(a) bring or defend any legal proceeding in the name and on behalf of the company...” (emphasis added)
- [19] It is unsurprising that the power to bring a legal proceeding conferred on liquidators under s 477(2) is to bring the proceeding in the name and on behalf of the company.

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<sup>3</sup> The affidavits of the liquidator Mr Kukulovski [16] and Mr Casey [18] do not describe the guarantee's effect identically.

The general principle is that in an action to redress a wrong done to a company or recover money due to it, the company is the proper plaintiff.<sup>4</sup>

- [20] This legal proceeding has been brought by liquidators but they have not brought it “in the name” of the company. The claim and statement of claim do not indicate the action is brought on behalf of the company. Nor is the company joined as a co-plaintiff as sometimes occurs where liquidators bring proceedings as agents for the company in liquidation.<sup>5</sup>
- [21] The plaintiffs’ counsel specifically disowned any notion that the action is brought on behalf of the company.<sup>6</sup> Rather, the plaintiffs’ counsel informed the court, the action is brought on behalf of the creditors of the company.<sup>7</sup>
- [22] It is not to be doubted a liquidator must act in the best interest of creditors. However here the liquidators have elected not to pursue that interest by the vehicle of an action in the name of the company and or on behalf of the company. Importantly creditors who disagree with a liquidators’ decision not to institute proceedings in the name and on behalf of the company may apply for orders compelling the liquidators to do so, pursuant to s 477(6) of the *Corporations Act* which provides:
- “The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory, or ASIC, may apply to the court with respect to any exercise or proposed exercise of any of those powers.”
- [23] The utility of s 477(6) to creditors and the creditors’ right to themselves pursue litigation on behalf of a company is explained in MacPherson’s *The Law of Company Liquidation*:
- “If a liquidator either believes that an action is too risky to pursue or he or she does not have sufficient funds, then despite the fact that the general principle is that when a company is in liquidation the person in whom the authority to bring proceedings on the part of the company is vested is the liquidator, a creditor or member who thinks that the action has merit and should be prosecuted may apply to the court and seek either permission to proceed on behalf of the company or an order directing the liquidator, pursuant to s 477(6), to proceed.”<sup>8</sup> (footnotes omitted)
- [24] There has been no application pursuant to s 477(6). The liquidator did not institute this proceeding pursuant to an order of the court.
- [25] The plaintiff submits he does have power to bring proceedings in the name of the liquidator by reason of s 477(2)(m) which confers a catch all power on liquidators to:
- “(m) do all such other things as are necessary for winding up the affairs of the company and distributing its property.”

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<sup>4</sup> *Christianos v Aloridge* (1995) 59 FCR 273, 281.

<sup>5</sup> *Eg Kassem, in the matter of Koutavas v Struthers* [2011] FCA 322, *Re Lawrence Waterhouse Pty Ltd (in Liq) Shaw v Minsden Pty Ltd* [2011] NSWSC 964.

<sup>6</sup> R 1-51 L16.

<sup>7</sup> R 1-51 L11.

<sup>8</sup> Fourth edition p 258.

- [26] Such an interpretation does not at first blush rest easily with the Legislature having made specific provision in the same subsection, at s 477(2)(a), for a power to bring or defend a legal proceeding. However, the existence in the same statute of s 588FF, which allows a liquidator to institute proceedings in respect of certain voidable transactions without an express requirement that the liquidator do so in the name and on behalf of the company, supports a conclusion that s 477(2)(a) ought not be read as covering the field to the exclusion of liquidators initiating proceedings other than in the name of and on behalf of the company. Such a conclusion also rests comfortably with the catch all nature of the words conferring power upon liquidators in s 477(2)(m). That sub-section's test of necessity has been interpreted as requiring the exercise of power to be expedient rather than essential or indispensable for the winding up.<sup>9</sup> The clawing back of alleged property of the company, as the plaintiff here seeks to do, might reasonably be thought to be expedient in the winding up of affairs and distributing of property.
- [27] Section 588FF is arguably relevant to the present topic for another reason. It contains a more confining limitation than that of necessity in s 477(2)(m). Section 588FF allows a court "on the application of a company's liquidator" to make various orders if satisfied a transaction is voidable pursuant to s 588FE, for example if it was an uncommercial transaction. The orders allowed by s 588FF include orders of the very kind sought by the plaintiff here. However the transactions here occurred too long ago to meet s 588FE's requirement of temporal proximity to the winding-up necessary for them to be voidable. There is force to the point that s 477(2)(m) ought not be read as permitting a liquidator to avoid the temporal limitations imposed upon the operation of s 588FE but that point is only valid as it relates to a liquidator's application seeking to allege transactions are voidable because of s 588FE. The proceeding here contends the transactions are voidable under a statute other than the *Corporations Act*, that is, the *Property Law Act* at s 228.
- [28] For these reasons it can be accepted that s 477(2)(m) of the *Corporations Act* might empower liquidators to institute proceedings pursuant to s 228 of the *Property Law Act*. The real issue here is whether the liquidator is in this case a person to whom s 228 applies.
- [29] The transactions the plaintiff seeks to disturb pursuant to s 228 of the *Property Law Act* are, under that section, only voidable "at the instance of any person prejudiced by the alienation of property". If the plaintiff's factual allegations are correct the creditors of the company or some of them may have been prejudiced by the alienation of the property. Given the nature of the conduct pleaded it is also arguable that the company itself was prejudiced by the alienation. However, the action is not brought by the company or a creditor but by the liquidator.
- [30] The plaintiffs confront this problem by submitting that the liquidator is a person prejudiced by the alienation of the property. The plaintiff submits that unless this action is successful there will be insufficient funds to meet the liquidators' expenses and thus the liquidator is a person prejudiced by the alienation of the property.
- [31] Three main difficulties with the plaintiff's argument were raised. Firstly, while s 228 contains no express temporal limitation it is well established that as at the time of the

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<sup>9</sup> *Re McGrath & Anor* (2010) 78 ACSR 405, [20].

proceeding the person prejudiced must at least allegedly be owed a debt.<sup>10</sup> It was submitted there is no evidence that the plaintiff is owed a debt by Blue Chip. To the contrary it was submitted the filed evidence showed the liquidator's fees have been paid.<sup>11</sup> The plaintiff asserted to the contrary, referring to evidence that in the report to creditors of 19 October 2011 the liquidators were said to have remuneration outstanding.<sup>12</sup> However that was well before the proceedings started on 1 December 2014 and a more recent report of 14 April 2015 makes no such claim.<sup>13</sup> In the upshot the facts are not sufficiently clear to confidently reach an informed view on this aspect.

- [32] The second difficulty raised is that it is not pleaded the plaintiff liquidator is owed a debt by Blue Chip or that he is a person prejudiced. Paragraph 84 of the statement of claim clearly pleads the identity of the persons "prejudiced by the alienation of property" for the purposes of s 228 as being the Deputy Commissioner of Taxation and Grant Long. It is simply not the plaintiff's pleaded case that the plaintiff was prejudiced by the alienation of property. Of itself that problem is fatal unless leave is given to replead. In light of the third and seemingly determinative difficulty now discussed this does not appear likely to be an appropriate case in which to give such leave.
- [33] The third difficulty is that, even accepting the plaintiff's assertion of prejudice, it is not in the circumstances of this case a prejudice occasioned "by the alienation of property".
- [34] The alienation of property complained of here occurred over 18 months before the application for winding up and the ensuing appointment of administrators and then liquidators. Of itself such a lapse of time is not necessarily an obstacle to the application of s 228. The section implicitly requires contemporaneity as between the alienation and the intent to defraud but not necessarily the alienation and the prejudice.<sup>14</sup> For instance a claim may be likely to mature into a debt but not yet have done so as at the time of the alienation.<sup>15</sup> It is more doubtful whether the section could apply to a person who at the time of the alienation did not have some interest which at least had the future potential to be prejudiced by the alienation.
- [35] For the plaintiff to have standing here s 228 would have to be a provision of breath taking effect, conferring standing upon persons who were not prejudiced in any causative sense by the alienation of the subject property but rather were prejudiced at some subsequent time through a mere chain of events having no truly causative connection with the alienation. That is not the effect of s 228.
- [36] The words of s 228 require that the person referred to has been prejudiced "by" the alienation of property. This requires a causative link, that is, that the prejudice complained of has been caused by the alienation. It is self-evident that the existence of a causative link will be more difficult, though not necessarily impossible, to establish if the person alleging prejudice did not at the time of the alienation at least

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<sup>10</sup> See, eg, *Chen v Marcolongo* (2009) 260 ALR 353, 377-378 (over-turned, though not on this point in *Marcolongo v Chen* (2011) 242 CLR 546).

<sup>11</sup> First to Third Defendant's Outline [16].

<sup>12</sup> Affidavit of Trajan Kukulovski ex C p9.

<sup>13</sup> Affidavit of Trajan Kukulovski ex E.

<sup>14</sup> *Chen v Marcolongo* (2009) 260 ALR 353, 377 (over-turned, though not on this point in *Marcolongo v Chen* (2011) 242 CLR 546).

<sup>15</sup> *Ibid.*

have an interest which had the potential to be prejudiced by the alienation, even if that prejudice did not manifest itself until some time after the alienation had occurred.

- [37] Here the plaintiff liquidator had no such interest. The alienation complained of occurred long before the liquidator assumed any connection at all with the company or its creditors. This is contrast, for example, to *Fletcher & Ors v Fortress Credit Corporation (Australia) II Pty Ltd & Ors*<sup>16</sup> where the plaintiff liquidators alleged alienations had occurred in order to defeat “an imminent claim” by them. No such claim was imminent at the time of the alienation here.
- [38] The liquidator’s alleged prejudice here simply was not caused by the alienation. The prejudice of which the liquidator complains was caused by the liquidator’s decision in taking on an appointment which of its very nature carried a risk there may be insufficient funds to meet its fees and expenses.
- [39] The plaintiff’s purported prejudice was not caused by the alienation. It follows the plaintiff has no standing under s 228 to pursue its action.

### **Conclusion**

- [40] The plaintiff’s lack of standing at the very least means the statement of claim discloses no reasonable cause of action and should therefore be struck out.<sup>17</sup> I will so order. Such an order sufficiently manifests my finding of lack of standing as to make it unnecessary to make a declaration that the plaintiff lacks standing.
- [41] The plaintiff’s lack of standing appears to so go to the root of the proceeding as to also justify orders which prevent the continuation of the proceeding, such that the plaintiff should not be given leave to re-plead and the claim should be set aside. However that aspect of the matter was not the subject of particularly substantive argument. I therefore hesitate to yet make orders entirely extinguishing the proceeding lest I overlook some legitimate argument in support of re-pleading, amending the claim or including, substituting or removing a party. The safer course is to afford the parties a chance to be heard further on those issues with the benefit of knowledge of my finding and the reasons for it. This I will do by ordering that I will hear the parties as to what further orders should be made. Such an order will also allow me to hear the parties as to costs. Given the plaintiff’s probable need to consult creditors I will allow sufficient time for that to occur before the further hearing of the matter.
- [42] The above conclusions make it unnecessary at this stage and potentially at all to determine the security for costs and enquiry applications. I am conscious that I have heard substantive argument on those applications and that it is generally desirable to make rulings on all matters in issue. However, the particular controversy connected with those applications causes me to conclude it is here unhelpful to make rulings on them until and unless it is necessary.

### **Orders**

- [43] My orders are:

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<sup>16</sup> [2014] QSC 303.

<sup>17</sup> *Uniform Civil Procedure Rules 1999* (Qld) r 171(1)(a); *Kern Consulting Group Pty Ltd & Anor v Opus Capital Ltd* [2014] QCA 111.

1. The statement of claim is struck out.
2. I will hear the parties at 10.00 am on 16 October 2015 as to what further orders should be made (leave is given for parties to appear by telephone or video link).