

SUPREME COURT OF QUEENSLAND

CITATION: *Pearce & Dullaway as joint and several liquidators of Laphoenix Park Pty Ltd (In Liquidation) (Receivers and Managers Appointed v Bonato* [2015] QSC 306

PARTIES: **MARK WILLIAM PEARCE AND MICHAEL DULLAWAY AS JOINT AND SEVERAL LIQUIDATORS OF LAPHOENIX PARK PTY LTD ACN 125 328 921 (IN LIQUIDATION (RECEIVERS AND MANAGERS APPOINTED))**
(First Plaintiff)
LAPHOENIX PARK PTY LTD ACN 125 328 921 (IN LIQUIDATION (RECEIVERS AND MANAGERS APPOINTED))
(Second Plaintiff)
v
ELAINE MARGARET BONATO
(Defendant)

FILE NO/S: Brisbane No 6353 of 2015

DIVISION: Trial Division

PROCEEDING: Application on the papers

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 29 October 2015

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: Boddice J

ORDER: **1. Personal service of the Claim and Statement of Claim filed in this proceeding on 29 June 2015 on the defendant is dispensed with.**

2. Pursuant to Rule 116(1) of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR), the Claim and Statement of Claim filed in this proceeding on 29 June 2015 be served on the defendant using the following methods:

(a) Posting a copy of the sealed Claim and Statement of Claim together with a copy of the order (which the applicant now seeks) by ordinary prepaid post addressed to Elaine Margaret Bonato at PO Box 174, Giru, QLD 4809;

- (b) Posting a copy of the sealed Claim and Statement of Claim together with a copy of the order (which the applicant now seeks) by ordinary prepaid post addressed to Elaine Margaret Bonato at 238 Upper Haughton Rd, Horseshoe Lagoon, QLD 4809; and**
 - (c) Personally serving a copy of the sealed Claim and Statement of Claim together with a copy of the order (which the applicant now seeks) on an adult apparently residing at 43 Canberra St, Ayr, QLD 4807.**
- 3. Pursuant to Rule 116(3) of the UCPR, service on the defendant is deemed to be effected on the later of:**
- (a) The fourth business day after the Claim and Statement of Claim is posted to the defendant in accordance with paragraph 2(a) above;**
 - (b) The fourth business day after the Claim and Statement of Claim is posted to the defendant in accordance with paragraph 2(b) above;**
 - (c) The second business day after the Claim and Statement of Claim is personally served at 43 Canberra St, Ayr, QLD 4807 in accordance with paragraph 2(c) above.**
- 4. The costs of and incidental to this Application be reserved.**

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – SERVICE – where the applicants sought orders for substituted service on the defendant – where the applicants had engaged service agents to attempt to effect personal service on the defendant but those attempts had been unsuccessful – whether the orders for substituted service on the defendant sought by the applicants should be granted

Uniform Civil Procedure Rules 1999 (Qld)

COUNSEL: No appearance by the applicant, the applicant’s submissions were heard on the papers

No appearance by the respondent, the respondent’s submissions were heard on the papers

SOLICITORS: No appearance by the applicant, the applicant’s submissions were heard on the papers

No appearance by the respondent, the respondent’s submissions were heard on the papers

- [1] By application filed 7 October 2015, the applicant plaintiffs seek orders for substituted service on the defendant in this proceeding.
- [2] The applicant's claim is for monies owing by the defendant as a debt or liquidated demand. Service agents have attempted to effect personal service on the defendant at her last known address. Those agents have also made multiple attempts to contact the defendant by telephone. All attempts have been unsuccessful.
- [3] The applicants have ascertained from the Trustee in Bankruptcy for the defendant's husband's estate that his last known address is 238 Upper Houghton Road, Horseshoe Lagoon, Queensland. The defendant has also confirmed her current address is PO Box 174, Giru, Queensland, 4809. At the time the defendant provided that address she refused to provide a residential address. However, enquiries at 43 Canberra Street, Ayr, Queensland elicited information that relations of the defendant reside at that address and have continuing contact with her.
- [4] I am satisfied that reasonable efforts have been made by the applicants to effect personal service of the originating process. Despite those reasonable efforts, the applicants have not been able to effect personal service on the defendant. I am satisfied that no further reasonable steps can be taken and that it is impractical to serve the claim and statement of claim on the defendant personally.
- [5] I am further satisfied the steps proposed by the applicants, namely posting a copy of the sealed claim and statement of claim and a copy of this order by ordinary pre-paid post to PO Box 174, Giru, Queensland, 4809 and to 238 Upper Houghton Road, Horseshoe Lagoon, Queensland, 4809 and by personally serving a copy of the sealed claim and statement of claim together with the copy of the order on an adult residing at 43 Canberra Street, Ayr, Queensland, 4807 are reasonably likely to bring the documents to the attention of the defendant.
- [6] The applicants proposed posting a copy of the documents to the defendant's husband's Trustee in Bankruptcy. However, there is nothing in the material to indicate they have ongoing contact with the defendant, or that it would be reasonable to expect them to take steps to pass it on to the defendant. I do not order that substituted service occur in that manner.
- [7] I make orders in terms of the amended draft, which I initial and place with the papers.