

**COURT OF APPEAL**

**MARGARET McMURDO P  
FRASER JA  
MORRISON JA**

**Appeal No 6694 of 2013  
SC No 2630 of 2010**

**TAG**

**Applicant**

**v**

**CBS**

**Respondent**

**BRISBANE**

**FRIDAY, 27 NOVEMBER 2015**

**JUDGMENT**

**THE PRESIDENT:** There are two applications before the Court. One is an application for an extension of time to appeal from a judgment of the Supreme Court judge in Cairns in *GAC v CNT* [2013] QSC 127, which was delivered on 15 April 2013. The judgment concerned the female applicant's attempt to have a recognised separation agreement under the *Property Law Act 1974* (Qld) overturned and replaced with other orders. She also applied for a stay of execution of those orders. Her application for an extension of time and for the stay were filed on 22 July 2013. She was about 10 weeks late in attempting to pursue her appeal rights. The stay application was heard on 25 July 2015 and was refused.

There is a separate application by the male applicant for the dismissal of the female applicant's application for an extension of time.

The female applicant has today asked for an adjournment of both applications on the basis that although she is now an undischarged bankrupt she has had a meeting of her creditors and her application for compositional arrangement, with the possibility of her bankruptcy being annulled, has been adjourned until 4 December 2015. She seeks an adjournment of both applications until after that time as, if she is successful in the annulment of the bankruptcy, her counsel initially contended, this would result in her ability to pursue her appeal rights.

It is helpful to set out the history of the matter in this Court. The progression of the application for an extension of time has been very slow since its filing over two years ago. It has involved many extensions of time to the applicant for the filing of her material and she has certainly been extremely dilatory in pursuing the application, in part because of her poor state of mental health. She has at times been self-represented and at other times represented by lawyers.

On 15 November 2013, the female applicant on her own petition became an undischarged bankrupt. On 20 February 2014, the trustee in bankruptcy informed the Court of Appeal registry that as no creditor had offered to provide funding for the female applicant's application for an extension of time, the Official Trustee had abandoned the action. Under s 60 *Bankruptcy Act* 1966 (Cth) this had the effect that the action, which under s 60(5) included an application for an extension of time to appeal, was abandoned. That was the end of her application.

Unfortunately, for a number of reasons which it is not necessary to fully set out here, the proceedings limped on. The female applicant was pressing for extensions of time and was pursuing an annulment of her bankruptcy and other matters which confused things. Finally, the male applicant filed an application for dismissal of the female applicant's application for an extension of time. As we have unravelled the complex and sad history of this matter today, it has become clear to all parties and the Court that the application for an extension of time became defunct on 20 February 2014. For that reason, it would be pointless to grant the female applicant her adjournment today. The orders this Court should make are that the application for the adjournment is refused; the application for an extension of time is dismissed; and the application to dismiss the application for an extension of time is granted.

**FRASER JA:** I agree. I would add only that a ground of the application for the adjournment was that the applicant for the extension of time hoped that there would be a resolution at a meeting of creditors, accepting a composition proposed by that applicant. The difficulty with that argument was that whilst, if accepted that would amount to an annulment of the bankruptcy under s 74(5) of the *Bankruptcy Act*, the bankruptcy would be annulled by force of that subsection on the date on which the special resolution was passed; and under s 74(6) the result would be that the abandonment of the action by the Official Trustee would be one of the acts done by the trustee before the annulment which shall be deemed to have been validly done. In other words, even if there is a composition, it will not affect the validity of the Official Trustee's abandonment of the application for an extension of time. I agree with the orders proposed by the President.

**MORRISON JA:** I agree with what has been said by the President and Justice Fraser and the proposed orders.

**THE PRESIDENT:** The orders are as I have proposed with the additional order that the female applicant pay the male applicant/respondent's costs of both applications. A transcript should be made of today's hearing and placed on the file. Adjourn the Court.