

# SUPREME COURT OF QUEENSLAND

CITATION: *Warren v Queensland Law Society Inc* [2016] QSC 168

PARTIES: **ALEXIA MARGARET WARREN**  
(applicant)  
v  
**QUEENSLAND LAW SOCIETY INCORPORATED**  
(respondent)

FILE NO: SC No 683 of 2015

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 12 July 2016 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 12 July 2016

JUDGE: **Atkinson J**

ORDERS: **1. Application for leave to proceed under r 72 of the *Uniform Civil Procedure Rules 1999* (Qld) is refused.**  
**2. The entire proceeding by the applicant is stayed unless and until the applicant's trustees in bankruptcy elect to continue with it or file a notice of discontinuance.**  
**3. The applicant is to pay the costs of and incidental to the application to be assessed.**

CATCHWORDS: BANKRUPTCY – PROCEEDINGS IN CONNECTION WITH SEQUESTRATION – PETITION AND SEQUESTRATION ORDER – EFFECT OF BANKRUPTCY ON PROPERTY AND PROCEEDINGS – ACTIONS BY AND AGAINST BANKRUPT – STAY OF PROCEEDINGS AGAINST BANKRUPT AFTER PRESENTATION OF PETITION – TRUSTEE'S ELECTION TO PROSECUTE OR DISCONTINUE MATTERS – where the applicant's appeal against the appointment of receivers to her practice was dismissed – where the applicant became bankrupt by a sequestration order of the Federal Circuit Court – where the applicant seeks that the appeal judgment be set aside for fraud – where the trustee in bankruptcy declined to prosecute the action and elected not to continue with it – where, notwithstanding, the applicant sought leave to proceed on the basis that a wrong was done to her within the meaning of s 60(4) of the *Bankruptcy Act 1966* (Cth), namely, that the respondent struck her off and appointed receivers to her practice – whether the applicant should be granted leave to proceed

*Bankruptcy Act 1966 (Cth)*, s 60  
*Uniform Civil Procedure Rules 1999 (Qld)*, r 72

*Cox v Journeaux (No 2)* (1935) 52 CLR 713; [1935] HCA 48,  
 applied

*Quazer v Secure Funding Pty Ltd* [2010] QCA 251, applied

COUNSEL: The applicant appeared on her own behalf  
 L S Reidy for the respondent

SOLICITORS: The applicant appeared on her own behalf  
 Queensland Law Society Incorporated for the respondent

- [1] The applicant, Alexia Margaret Warren, brought a notice of appeal in this Court appealing against the appointment of receivers to her practice. Voluminous material was filed by her in support of that application. The application was heard over a number of days and further written submissions were received on a number of days. Her application was dismissed by a Judge of this Court, Justice Martin, on 18 December 2015.
- [2] On 10 June 2016, Ms Warren brought an application seeking a large number of orders, including an application to have the judgment set aside for fraud. She also sought, pursuant to r 72 of the *Uniform Civil Procedure Rules 1999 (Qld)* (“UCPR”), the Court’s leave to proceed. That application has been dealt with as a preliminary matter by this Court for reasons that will become obvious.
- [3] Rule 72 of the UCPR provides that if a party to a proceeding becomes bankrupt a person may take a further step in the proceeding for or against that party only if, *inter alia*, the Court gives a person leave to proceed. It appears that Ms Warren became bankrupt by a sequestration order of the Federal Circuit Court made on 5 February 2016. Accordingly, r 72 of the UCPR applies and no further step can be taken in this proceeding without the leave of the Court first obtained.
- [4] The Queensland Law Society submitted that the Court does not have power under r 72 to give leave to proceed to Ms Warren as an undischarged bankrupt without the consent of the trustee in bankruptcy. The authority for that proposition is found in the Court of Appeal case of *Quazer v Secure Funding Pty Ltd* [2010] QCA 251, where the President, with whom White JA and Applegarth J agreed, said at [27]:
- “*Beames v State of Queensland*<sup>1</sup> is authority for the proposition that a court does not have power under UCPR r 72 to give an undischarged bankrupt ... leave to proceed without the consent of his trustees in bankruptcy. They have not consented to the bringing of this appeal or Mr Quazer’s present application.”
- [5] The source of that ruling is found in s 60(2) of the *Bankruptcy Act 1966*, a Commonwealth Act which, of course, has precedence over State legislation or rules. Subsection (2) provides that:

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<sup>1</sup> [2010] QSC 4, esp [18].

“An action commenced by a person who subsequently becomes a bankrupt is, upon his or her becoming a bankrupt, stayed until the trustee makes election, in writing, to prosecute or discontinue the action.”

- [6] The trustee has made it perfectly clear, both on an attempt by Ms Warren to unsuccessfully appeal the order made by Justice Martin and by correspondence exhibited in this interlocutory application, which is appropriate to admit, that not only has he not elected to prosecute the action, he has made it perfectly clear that he has elected not to continue with it. Therefore, by virtue of Commonwealth law, the matter is stayed unless it falls within s 60(4) of the *Bankruptcy Act*. If a matter is stayed by virtue of Commonwealth legislation, it would not be appropriate for this Court to grant leave for it to be continued and for further steps to be taken.
- [7] So, to reiterate, Ms Warren has a judgment against her of a Judge of this Court. Her appeal against that decision was dismissed by an order made by the President of the Court of Appeal as the trustee had abandoned the appeal proceedings. This application is an attempt to re-litigate those proceedings by claiming that the judgment was obtained by fraud.
- [8] So I move on to the question of whether or not, notwithstanding the effect of s 60(2), the consent of the trustee in bankruptcy is not required. Ms Warren argues that it is not because she says, as best I understood it, that the actions of the Queensland Law Society in striking her off when she should not have been or was not struck off and in appointing receivers to her practice was a wrong done to her.
- [9] Section 60(4) provides that:

“Notwithstanding anything contained in this section, a bankrupt may continue, in his or her name, an action commenced by him or her before he or she became a bankrupt in respect of:

- (a) any personal injury or wrong done to the bankrupt, his or her spouse or de facto partner or a member of his family; or
- (b) the death of his or her spouse or de facto partner or a member of his or her family.”

- [10] Fortunately, this section has been the subject of consideration by the High Court as to what a personal injury or wrong consists of. It should be noted that “personal” appears to be an adjective not only to injury but also to wrong. The matter was considered by Dixon J in *Cox v Journeaux (No 2)* (1935) 52 CLR 713 at 721 where his Honour said:

“The test appears to be whether the damages or part of them are to be estimated by immediate reference to pain felt by the bankrupt in respect of his mind, body or character and without reference to his rights of property.” (references omitted)

- [11] Ms Warren’s claim to have a judgment obtained in this Court set aside for fraud does not fall within the definition found in the exception in s 60(4). Accordingly, the matter is, by

virtue of the *Bankruptcy Act 1966* (Cth), stayed. There is no occasion for this Court to grant leave. It would be entirely inappropriate for the Court to grant leave in these circumstances. Accordingly, the application for leave to proceed under r 72 is refused and the entire proceeding by Ms Warren is stayed unless and until her trustees in bankruptcy elect to continue with it or file a notice of discontinuance. Ms Warren is to pay the costs of and incidental to the application to be assessed.