

# SUPREME COURT OF QUEENSLAND

CITATION: *Oliver v Samios Plumbing Pty Ltd* [2016] QCA 236

PARTIES: **DANIEL FREDERICK OLIVER TRADING AS TOP PLUMBING**  
(applicant)  
v  
**SAMIOS PLUMBING PTY LTD**  
ACN 010 360 899  
(respondent)

FILE NO/S: Appeal No 4318 of 2016  
DC No 240 of 2012

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time/General Civil Appeal

ORIGINATING COURT: District Court at Brisbane – Unreported: 15 May 2012

DELIVERED EX TEMPORE ON: 15 September 2016

DELIVERED AT: Brisbane

HEARING DATE: 15 September 2016

JUDGES: Fraser and Philip McMurdo JJA and Atkinson J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The appeal is dismissed with costs.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – NATURE OF RIGHT – WHO MAY EXERCISE RIGHT – OTHER PERSONS ENTITLED – where judgment in the Magistrates Court was entered against the applicant for a sum of money – where appeal to the District Court was dismissed in 2012 – where the applicant seeks an extension of time to appeal against the decision of the District Court and removal of bankruptcy orders – where the trustee in bankruptcy does not consent to the applicant’s application to the Court of Appeal – where the respondent argues that the application should be dismissed because the applicant is an undischarged bankrupt and does not have standing to appeal – whether the applicant has standing to appeal against the orders of the District Court

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – ENFORCEMENT OF JUDGMENT AND ORDERS – EXECUTION AGAINST THE PERSON – OTHER MATTERS

– where judgment in the Magistrates Court was entered against the applicant for a sum of money – where appeal to the District Court was dismissed in 2012 – where the applicant seeks an extension of time to appeal against the decision of the District Court and removal of bankruptcy orders – where the applicant submits that the judgment debt against him “trading as” (business name) does not justify proceedings or a bankruptcy order against him personally – where the respondent submits that the applicant is personally liable for the judgment debt – whether judgment entered against the applicant “trading as” (business name) renders the applicant personally liable

*Bankruptcy Act 1996 (Cth)*, s 5, s 27, s 153B

*Civil Proceedings Act 2011 (Qld)*, s 88, s 89

*Uniform Civil Procedure Rules 1999 (Qld)*, r 89, r 90, r 748

*Citigroup Pty Limited v Oliver*, unreported, Byrne SJA, SC No 11927 of 2013, 7 March 2014, cited

*Cummings v Claremont Petroleum NL* (1996) 185 CLR 124, [1996] HCA 19, cited

*Srbecky v Bess* [2001] QDC 42, cited

*W Hill & Son v Tannerhill* [1944] KB 472, cited

COUNSEL: The applicant appeared on his own behalf  
P G Jeffery for the respondent

SOLICITORS: The applicant appeared on his own behalf  
JHK Legal for the respondent

**FRASER JA:** On 20 December 2011, a magistrate ordered that judgment be entered for the respondent against the applicant for \$51,988.25 upon the respondent’s claim for moneys owing for plumbing goods sold to the applicant and for costs and interest. On 15 May 2012, a District Court judge ordered that the applicant’s appeal to that Court be dismissed with costs. The period limited for applying to this Court for leave to appeal against that order expired 28 days after the order was made: *Uniform Civil Procedure Rule 1999*, r 748. On 29 April 2016, the applicant filed an application for an extension of time within which to appeal against the orders made in the District Court. The notice of appeal seeks orders for refunds of costs incurred by the applicant in the litigation, an order dismissing the District Court judge’s decision and an order to “remove” bankruptcy orders made in respect of the applicant on 25 July 2012.

The applicant supplied the Court with copies of a creditor’s petition and a supporting affidavit filed in June 2012 by the respondent in the bankruptcy proceedings in the Federal Magistrates

Court. The judgment debt ordered in the Magistrates Court formed the basis of the bankruptcy notice served by the respondent upon the applicant and non-compliance with that bankruptcy notice presumably founded the bankruptcy order against the applicant.

An affidavit filed by leave by the respondent deposes to a search of the National Personal Insolvency Index which records that the applicant was made bankrupt on 25 July 2012 and he remains bankrupt. The affidavit exhibits an email from the trustee's firm of chartered accountants which conveys that the trustee has not consented to the applicant's application in this Court, the applicant has failed to complete and lodge his statement of affairs, and he will not be discharged from bankruptcy until after he does so.

The respondent argued that the applicant's proceeding in this Court should be dismissed on the ground that because the applicant is an undischarged bankrupt, he does not have standing to appeal. The applicant argued that his proceeding should not be dismissed on this ground. It is appropriate to decide this issue as a preliminary point.

The judgment for the respondent against the applicant evidences a debt provable in the applicant's bankruptcy. The applicant's bankruptcy divested him of his interests in property and his liability for provable debts. In these circumstances, the Court is bound to conclude that the applicant has no financial interest such as would confer upon him the necessary standing to appeal against the orders made in the District Court: see *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124, especially at 137 - 138 and 148.

The applicant submitted that he had been given leave to proceed in a different matter by a judge in the Trial Division and for that reason this Court was obliged to give the applicant his day in the Court of Appeal. Whilst that judge did not decide that matter upon the ground of the applicant's bankruptcy, his Honour did observe that: "[i]t is at least very likely that his supervening bankruptcy denies him standing to pursue this application": *Citigroup Pty Limited v Oliver* (unreported), No 11927 of 2013, 7 March 2014, Byrne SJA. That case does not assist the applicant.

Furthermore, this Court has no jurisdiction to make an order annulling the applicant's bankruptcy; see *Bankruptcy Act* 1966, s 153B, s 5 (definition of "the Court"), s 27. The applicant argues that this Court nevertheless should make an order against the respondent requiring it to take steps in a court which has jurisdiction in bankruptcy to annul the applicant's bankruptcy. Putting aside any question about this Court's jurisdiction to make such an order, the applicant's material in any event supplies no ground for doing so. The applicant argues that the judgment debt against him "trading as Top Plumbing" did not justify proceedings or a bankruptcy order against him personally. He argues that there should have been another defendant in the Magistrates Court identified only by the full name of the applicant. The effect of the argument appears to be that "Top Plumbing" formed part of the name of the judgment debtor and that the judgment therefore could not justify the respondent in taking proceedings in the Federal Magistrates Court against the applicant in his own name. As the applicant's own defence in the Magistrates Court pleaded, however, "Top Plumbing is only a trading name". The mere fact that the judgment identifies the name under which the applicant traded does not mean that the judgment is not against the applicant. The judgment made the applicant personally liable for the judgment debt.

I would reach that conclusion without the need to refer to any previous decision but, as the respondent has pointed out, there is authority which supports it. In *W Hill & Son v Tannerhill* [1944] KB 472 at 475, Scott LJ referred to the addition to an individual's name of a reference to "trading as" a stated business as "mere useless and inappropriate surplusage". In *Srbecky v Bess* [2001] QDC 42, McGill DCJ discussed that case and other authority and held that a judgment against a named individual "trading as" a named business name was enforceable against the named individual.

I also note that because the proceedings and judgment against the applicant did not purport to be brought and given against a business name, it is not necessary to consider the legislative provisions which regulate proceedings and the enforcement of judgements in that form: see *Civil Proceedings Act* 2011 (Qld), s 88 and s 89 and *Uniform Civil Procedure Rules* 1999, rules 89 and 90.

The applicant has, I accept, a sense of grievance. He submits that the District Court judge gave legal advice to the respondent's lawyer. If that were so, it was, of course, impermissible. It is not a precedent which sanctions that course. But this Court must decide the question of standing according to law. In my view, the respondent's preliminary point must be upheld. I would order that the application be dismissed.

**PHILIP McMURDO JA:** I agree.

**ATKINSON J:** I agree.

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**FRASER JA:** The application is dismissed with costs.