

# SUPREME COURT OF QUEENSLAND

CITATION: *Jorgensen v Jorgensen & Anor* [2016] QSC 235

PARTIES: **BRIAN JORGENSEN**  
(applicant)  
v  
**TRUDY JORGENSEN**  
(first respondent)  
**TEKSID PTY LTD ACN 004 359 979**  
(second respondent)

FILE NO/S: SC No 342 of 2016

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED EX TEMPORE ON: 30 September 2016

DELIVERED AT: Cairns

HEARING DATE: 30 September 2016

JUDGE: Henry J

ORDER: **The order of the court is that –**

- 1. pursuant to s 25(1) of the *Civil Proceedings Act 2011*, proceeding D180/2016 in the Townsville Registry of the District Court of Queensland is transferred to the Cairns Registry of the Supreme Court of Queensland;**
- 2. proceedings D180/2016 is permanently stayed;**
- 3. Trudy Jorgensen shall not, without leave of the court institute or cause to be instituted any proceedings with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust; and**
- 4. the Respondents pay the Applicants costs of this application and of proceeding D180/2016 to be assessed on the standard basis.**

CATCHWORDS: PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – INHERENT AND GENERAL STATUTORY POWERS – TO PREVENT ABUSE OF PROCESS – GENERALLY – where the applicant seeks orders, pursuant to s 25(1) of the *Civil Proceedings Act 2011*, to have proceedings transferred from the Townsville Registry of the District Court of

Queensland to the Cairns Registry of the Supreme Court of Queensland – where the applicant seeks, by an exercise of the inherent jurisdiction of the Court to prevent an abuse of process, to have the transferred proceedings dismissed or permanently stayed – whether it is an appropriate case for the Court to exercise its inherent jurisdiction to prevent an abuse of process

PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – VEXATIOUS LITIGANTS, PROCEEDINGS AND RELATED MATTERS – VEXATIOUS PROCEEDINGS – where the applicant seeks, by an exercise of the inherent jurisdiction of the Court to prevent an abuse of process, to have the proceedings commenced by the respondents in Townsville be dismissed or permanently stayed – where the first respondent is the daughter of a person subject to an order pursuant to the *Vexatious Proceedings Act 2005 (Qld)* and has evinced an intention to seek to abuse court processes – where the second respondent is an entity controlled by first respondent’s father, a person subject to an order pursuant to the *Vexatious Proceedings Act 2005 (Qld)* – whether it is an appropriate case for the Court to exercise its inherent jurisdiction to prevent an abuse of process – whether the transferred Townsville proceedings should be dismissed or permanently stayed

*Civil Proceedings Act 2011 (Qld)*, s 25

*Trusts Act 1973 (Qld)*, s 8

*Uniform Civil Procedure Rules 1999 (Qld)*, r 304

*Vexatious Proceedings Act 2005 (Qld)*

*Jorgensen v Jorgensen & Ors* [2016] QSC 193

*Lidden v Composite Buyers* (1996) 67 FCR 560

*Mantonella Pty Ltd v Grancroft Pty Ltd & Ors* [2015] QSC 191

*Von Risefer v Permanent Trustee Company Ltd* (2005) 1 Qd R 681

COUNSEL: J Trevino for the applicant  
No appearances for the respondent

SOLICITORS: Miller Harris for the applicant  
No appearances for the respondent

[1] HIS HONOUR: The applicant seeks orders that, pursuant to section 25(1) of the *Civil Proceedings Act 2011*, proceeding D180/2016 in the Townsville registry of the District Court of Queensland be transferred to the Cairns registry

of the Supreme Court of Queensland and that the transferred proceeding be dismissed as an abuse of process or alternatively permanently stayed on the same basis. Orders are also sought to the effect that neither respondent shall without leave of the court institute or cause to be instituted any proceeding with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust.

- [2] The amount of court time thus far wasted by courts in New South Wales and Queensland dealing with proceedings with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust since, on 30 June 2015, I gave a security for costs order in a matter before me relating to the Rainbow Motor Inn Unit Trust is concerning.
- [3] The course taken since that decision in *Mantonella Pty Ltd v Grancroft Pty Ltd & Ors* [2015] QSC 191 has been to seek to litigate the same issues that matter sought to litigate under the guise of various other entities including individual persons. An obviously influential member of that group of persons and entities is Alan Jorgensen. He appears to be the driving will behind much of what has occurred. There have been a series of litigations instituted, plainly calculated at getting around my costs order in what have been obvious abuses of the court's process in various jurisdictions and venues. It is now readily enough apparent that Mr Jorgensen has enlisted his daughter, Trudy Jorgensen, the first respondent, in his quest.
- [4] Subsequent to the hearing of the application for security for costs before me, Mr Jorgensen attempted to circumvent the operation of my ultimate order by instituting various parallel proceedings in the New South Wales Supreme Court and the District Court and the Supreme Court of Queensland seeking the same or similar relief to that sought in the *Mantonella* proceeding. Some overview of those matters can be found in *Jorgensen v Jorgensen & Ors* [2016] QSC 193 [9-11], [62], [74-75]. A chronology extracted from the applicant's outline of submissions before me will be annexed to these reasons as part of them, also providing a convenient overview of some of the more pertinent past events.
- [5] Turning to the Townsville District Court proceedings now sought to be transferred and either dismissed or stayed, Trudy Jorgensen and Teksid Pty Ltd seek to impugn a transfer of units in the Rainbow Motor Inn Unit Trust which occurred in 1992 and it is alleged that the Jorgensen Family Trust is the rightful owner of the transferred units.
- [6] The ability of either applicant to bring such proceedings is by no means obvious. Ms Trudy Jorgensen in an affidavit by her asserts she is "a direct descendant beneficiary of the Jorgensen Family Trust". Yet it is not plain from the evidentiary material before me and it seems inherently unlikely that Ms Jorgensen is a beneficiary under or unit-holder in the Rainbow Motor Inn Unit Trust.

- [7] Admittedly this is not a summary judgment application where she might have been expected to file material going to the specific point. But the point heralds the probability she has no standing to bring the application. A claim by the Jorgensen Family Trust is one which she may have standing to bring to the extent that she might arguably be regarded as a beneficiary of the Jorgensen Family Trust and I certainly do not reach that conclusion. The circumstances under which a beneficiary would be permitted to act independently of a trustee are very limited, see, for example, *Lidden v Composite Buyers* (1996) 67 FCR 560. The application appears to involve no claim against the trustee of the Jorgensen Family Trust nor is there any evidence of refusal by the trustee to pursue the matter. It is difficult to see that section 8 of the *Trusts Act 1973* (Qld) referred to in the application, assists Ms Jorgensen as the application involves no action against or in respect of the conduct of the trustee of the Jorgensen Family Trust. On the face of it, Ms Jorgensen lacks standing.
- [8] As to the ability of Teksid to commence the proceedings on 17 February 2016, Teksid is purportedly a co-trustee of the Jorgensen Family Trust with Alan Jorgensen. After Daubney J heard argument in respect of the application under the *Vexatious Proceedings Act 2005* (Qld), he ordered that until judgment on the application Alan Jorgensen or any entity controlled by him may not without leave of the court institute or cause to be instituted any further proceedings with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust. Alan Jorgensen's daughter's apparent cooperation with his quest may have avoided the consequence of Daubney J's order but the use of Teksid does not. Alan Jorgensen resigned as a director effective 1 September 2016 but he was a director at the time the Townsville proceeding was commenced. Teksid was therefore precluded from having commenced the proceeding without leave, it clearly being an entity controlled by Alan Jorgensen.
- [9] These features, very significant in their own right, pale into insignificance against the broader point that the Townsville proceedings effectively replicates the relief sought by the trustee or alleged trustee of the Jorgensen Family Trust in prior proceedings brought by Mr Alan Jorgensen or entities controlled by him, namely: a claim by Mantonella Pty Ltd in its capacity as trustee in the Cairns registry of the Queensland Supreme Court, a claim by Mijac Investments Pty Ltd in its capacity as trustee in the New South Wales Supreme Court and a claim by Alan Jorgensen in his capacity as trustee in the New South Wales Supreme Court.
- [10] The Townsville proceeding also replicates claims made in respect of the Rainbow Motor Inn Trust brought by Ms Jorgensen and her sister in the Queensland Supreme Court in proceeding 641/16 and by Ms Jorgensen in District Court proceeding 66/16. Her to and fro conduct in instituting such proceedings mimics her father's pattern. The documents filed in respect of her action bear a similarity to the material proffered in similar proceedings by Mr Jorgensen or entities controlled by him. The conclusion is obvious: that she has become involved in endeavouring to assist Mr Jorgensen in his pattern of attempts to persist in litigation with respect to, connected with or arising out of

the Rainbow Motor Inn Unit Trust, and to do so as a device to avoid the costs order I have made in the proceeding in this Court, which provided a vehicle through which the issues with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust were sought, presumably in good faith, to be litigated.

- [11] On 5<sup>th</sup> September in *Jorgensen v Jorgensen and Ors* [2016] QSC 193, Daubney J ordered, pursuant to the *Vexatious Proceedings Act 2005* (Qld), that:

“...Alan Jorgensen, or any entity controlled by him, including Mantonella Pty Ltd and Mijac Investments Pty Ltd, shall not without the leave of the Court institute or cause to be instituted any proceedings with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust.”

- [12] His Honour’s reasons, understandably, did not deal with the Townsville proceedings, but they are apposite. He held at [74-75]:

“The short, and obvious, point in this case is that it is clear that AJ, and those associated with him, wish to pursue litigation against BJ and his interests in relation to the Trust. Yet the inconvenient truth for AJ is that there already exists a perfectly good and competent vehicle for the pursuit of those claims, namely the Cairns proceeding. It is AJ’s attempts to circumvent the Cairns proceeding, and the operation of the unchallenged security for costs order in that proceeding, which ought be the object of an order under the VPA. Such an order is necessary, in my view, to prevent AJ from persisting with his vexatious behaviour of abusing the Court’s process and disregarding court orders and rulings. But in my view, there is no warrant for making an order which would act as a general fetter on AJ’s access to the Courts. Rather, the order, in the circumstances of this case, should be limited to litigation concerning claims in respect of the Trust.

I should also record that, even if I am wrong about the application of the VPA to this case, I would have granted relief on the alternative basis, namely the Court’s inherent jurisdiction to prevent an abuse of the Court’s process. The availability of the inherent power to protect a party in BJ’s position by preventing a party such as AJ from bringing further or future proceedings of the same or similar nature to proceedings already on foot between the parties has been expressly recognised. AJ has clearly evinced an intention to seek to abuse this Court’s processes by circumventing the operation of the security for costs order made by Henry J in the Cairns proceeding. It is quite clear from AJ’s conduct that, unless restrained, he will continue to institute, or cause to be instituted, further proceedings which traverse the same or similar territory to that already under consideration in the Cairns proceeding.” (citations omitted)

- [13] Quite apart from Ms Jorgensen's pursuit of the Rainbow Motor Inn Unit Trust matter likely being a course she has involved herself in to assist her father in circumventing actual and likely orders preventing his continued abuse of process of Court, there is also reason to conclude that Ms Jorgensen herself has directly abused the Court's processes. She and her sister, Jimeale, commenced a claim by originating application on 14 January 2016. The application had an apparent connection, again, with the Rainbow Motor Inn Unit Trust matter. When the matter came before Daubney J on 2 February 2016, he ordered Ms Jorgensen and her sister to pay the respondent's indemnity costs thrown away by reason of an adjournment given, fixed in the sum of \$13,200, and moreover ordered that if that sum was not paid by 15 February 2016, the filing of an affidavit by the respondent's solicitor deposing to such default would be sufficient evidence for the purpose of striking out the application. The money was not paid and the application was struck out.
- [14] Ms Jorgensen commenced a second proceeding by originating application, filing it on 11 March 2016 in the District Court, D66/2016. The respondent applied in an application filed 30 March 2016 in the Brisbane Supreme Court for orders that proceeding be transferred to the Supreme Court, and the transferred proceeding be dismissed, and that Trudy Jorgensen be the subject of an order that she could not, without leave of the Court, take any step in any proceeding nor institute nor cause to be instituted any further proceedings with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust. That application was adjourned, apparently because Trudy Jorgensen discontinued her second initiated proceeding.
- [15] It is tolerably clear that the second proceeding was instituted, not only as part of the grander plan to aid her father in his abuses of the Court's process, but also to herself circumvent, in an obvious abuse of the Court processes, the orders made in the first proceeding she initiated.
- [16] Against all of that background, the application before me is compelling. The proceeding sought to be transferred and dismissed or permanently stayed is yet another attempt to circumvent orders that have been made in other proceedings connected with the Rainbow Motor Inn Unit Trust matter.
- [17] Section 25(1) of the *Civil Proceedings Act 2011* (Qld) confers a broad discretion to transfer a matter to this Court:  
"The Supreme Court may order that a proceeding pending in the District Court or a Magistrates Court be transferred to the Supreme Court."
- [18] A transfer is appropriate in the present context because of the inevitable inference that the Townsville proceeding was commenced as a way of circumventing the variety of Court orders I have already mentioned. That proceeding is, I accept, plainly an abuse of process. I have the power to prevent such an abuse in exercising my inherent jurisdiction; see, for example, *Von Risefer v Permanent Trustee Company Ltd* (2005) 1 Qd R 681. This includes the power to stay or dismiss the application and restrain the

respondents from instituting further proceedings in respect of the Rainbow Motor Inn Unit Trust; see *Von Risefer* [11-14], [23-26].

[19] It is noted the applicant still does not seek to shut down the proper litigation of the Rainbow Motor Inn Unit Trust matter. That vehicle still lies before this Court, pending the payment of the security for costs order.

[20] The only concern I hold in making the order sought relates not to the force of the applicant's underlying argument, for it is, as I say, compelling, but rather relates to an issue raised in an email apparently sent by Trudy Jorgensen to the registry yesterday. She therein advised:

“We will not be attending, given that the case against the applicants here, in the Townsville DC, has been discontinued, hence they now have no standing to attempt to transfer the case to the Supreme Court in Cairns.”

[21] I note no appearance was entered by the respondents today, consistent with the announced intention in that email. Because the Townsville District Court file was not before me, I asked the registrar to double check whether it is correct that a notice of discontinuance has been filed in Townsville, and she has provided me with a copy of a notice of discontinuance in respect of the Townsville proceeding. It reads:

“Take notice that the applicants discontinue their application against the first four respondents.

The applicants have not been served with an affidavit in reply from any respondent other than procedural issues.”

[22] Two points arise. Firstly, there is a fifth respondent, Kristin Jorgensen. She has been served in respect of today's application, but she too has not appeared.

[23] Secondly, the evidence before me shows that, in fact, the applicants had been served with an affidavit. That affidavit detailed much of the history of the abuse of processes which has occurred and has been mentioned by me earlier in my decision. I do not regard the affidavit as going, as the notice of discontinuance says, to “procedural issues”.

[24] Uniform Civil Procedure Rule 304 relevantly provides:

(1) A plaintiff or applicant may discontinue a proceeding or withdraw part of it before being served with –

(a) for a proceeding started by claim – the first defence of any defendant; or

(b) for a proceeding started by application – the first affidavit in reply from a respondent.

(2) However, after being served with the first defence or first affidavit in reply, a plaintiff or applicant may discontinue a proceeding or withdraw part of it only with the court's leave or the consent of the other parties.

- [25] The proceeding with which I am concerned was started by application. The affidavit which was filed went, as I say, beyond procedural issues and provided evidence of matters relevant to the merits of the application itself. It was, obviously, an affidavit in reply within the meaning of rule 304. It follows the discontinuance was ineffective, for the Townsville matter could only have been discontinued with the Court's leave or with the consent of the other parties. The respondents procured neither. It follows the matter is still current and that the strategy revealed in Trudy Jorgensen's email of avoiding the hearing of this application must fail.
- [26] Having dispensed, then, with that solitary concern, and consistent with the conclusions I have reached, the orders sought ought, in my view, be made.
- [27] I should record, for completeness, that a matter I take into account in ordering that the respondents not, without leave of the Court, institute or cause to be instituted any proceeding with respect to, connected with, or arising out of the Rainbow Motor Inn Unit Trust, is that the issues connected with the Rainbow Motor Inn Unit Trust matter can be litigated within the proper processes of this Court and without those processes being abused. It remains within the power of Trudy Jorgensen or Texit Pty Ltd, in seeking the Court's leave, to demonstrate an absence of abuse of the Court's processes.
- [28] The draft order before me seeks, in summary, the transfer of the Townsville matter and an order that it be permanently stayed. Consistent with my reasons, those orders should be made. It also seeks orders that Trudy Jorgensen and Texit Pty Ltd, not without leave of the Court, institute or cause to be instituted any proceedings with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust. Again, those orders should be made.
- [29] Costs are sought on the standard basis. That is an uncontroversial order to make in the circumstances.
- [30] I order, as per the draft order, signed by me and placed with the papers.

**SUPREME COURT OF QUEENSLAND****Applicant: BRIAN JORGENSEN****AND****First Respondent: TRUDY JORGENSEN****AND****Second Respondent: TEKSID PTY LTD ACN 004 359 979****Annexure to Judgment****Chronology**

<b>Date:</b>	<b>Event:</b>	<b>Ref:</b>
09/01/2015	Plaintiff commences Mantonella proceeding by way of Originating Application.	Affidavit of McGrath filed 26 July 2016 ("TGM") at [6] Ex <b>TGM1</b> , p. 1
26/3/2015	Application for security for costs filed and served.	
01/04/2015	Hearing of application for security for costs.	
28/05/2015	Mijac Investments Pty Ltd (a company controlled by Alan Jorgensen) brings claim in NSW Supreme Court as 'Co-trustee' of the Jorgensen Family Trust.	TGM [7] Ex <b>TGM2</b> , p. 68
30/06/2015	Judgment in application for security for costs.	
31/07/2015	Alan Jorgensen files Notice of Motion in NSW Supreme Court seeking substantially the same relief as that sought in the Cairns proceedings.	TGM [21] Ex <b>TGM3</b> , p.88

7/08/2015	Mijac claim dismissed.	Ex <b>TGM2</b> , p.84
12/11/2015	Remaining NSW claim with Alan Jorgensen as plaintiff transferred to Queensland Supreme Court by order of NSW Supreme Court. Brereton J found that proceeding was an abuse of process. NSW proceeding now SC 12602/15.	Ex <b>TGM3</b> , p. 106 Reasons for judgment at [21] (p.112 of <b>TGM3</b> )
08/12/2015	Costs orders made by Registrar – plaintiff Mantonella indebted to defendants in respect of 2 costs orders: \$5,792.92 and \$15,961.84. Those costs orders remain outstanding.	Ex <b>TGM1</b> , p.66
16/12/2015	Brian Jorgensen files application for orders against Alan Jorgensen under the <i>Vexatious Proceedings Act</i> .	Ex <b>TGM4</b> , p.119
14/01/2016	First claim by Alan Jorgensen’s daughters (Trudy and Jimeale) concerning the subject matter of the Mantonella proceeding filed in Brisbane Registry of the Supreme Court (SC 641/2016)	Ex <b>TGM9</b> , p.233
15/01/2016	Daubney J orders that:  <i>‘Until 4.00pm on 16<sup>th</sup> February 2016, or earlier Order, Alan Jorgensen, or any entity controlled by him, may not, without the leave of the Court, take any step in action 12602/15 or institute, or cause to be instituted, any further proceedings, with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust.’</i>	Ex <b>TGM6</b> , p.138

16/02/2016	Daughters' claim (SC 641/2016) struck out by reason of non-compliance with costs orders.	Ex <b>TGM11</b> , p.254  Ex <b>TGM12</b> , p.255
17/02/2016	Hearing of vexatious proceedings application before Daubney J. Judgment reserved.  Daubney J made following interim order:  <i>'Until judgment on the application filed on 16 December 2015, Alan Jorgensen, or any entity controlled by him, may not, without the leave of the Court, take any step in action 12602/15 or institute, or cause to be instituted, any further proceedings, with respect to, connected with or arising out of the Rainbow Motor Inn Unit Trust.'</i>	Ex <b>TGM8</b> , p.232
11/03/2016	Second claim by Alan Jorgensen's daughter (Trudy) filed in the District Court at Townsville (DC 66/2016). The application seeks orders in respect of the Rainbow Motor Inn Unit Trust.	Ex <b>TGM13</b> , p.261
29/03/2016	DC 66/2016 discontinued by Trudy Jorgensen	TGM [35]
30/03/2016	Brian Jorgensen commences proceedings in the Brisbane Supreme Court to have DC66/2016 transferred to the Supreme Court and dismissed as an abuse of process.	TGM [34]
02/04/2016	Alan Jorgensen appoints Teksid Pty Ltd as joint trustee of the Jorgensen Family Trust.	Ex <b>TGM15</b> , p.282 –  Affidavit of T Jorgensen, EX

		TJL1
12/05/2016	Mantonella files application to discontinue Cairns proceedings.	Ex <b>TGM1</b> , p.67A
20/05/2016	Orders made by Henry J. Mantonella's application to discontinue stayed until judgment delivered in vexatious proceedings application and stayed thereafter depending on terms of Daubney J's order.	Ex <b>TGM1</b> , p.67A
24/06/2016	Third claim by Alan Jorgensen's daughter (Trudy) and Teksid Pty Ltd filed in the District Court at Townsville (DC 180/16). (the proceedings the subject of this application).	Ex <b>TGM15</b> , p.267
26/07/2016	This application filed.	
4/09/2016	Alan Jorgensen resigns as director of Teksid.	Affidavit of McGrath filed 29 September 2016 - Ex <b>TGM1</b>
05/09/2016	Daubney J delivers judgment in vexatious proceedings application.	
22/09/2016	Notice of discontinuance filed in Townsville proceedings DC 180/2016. Proceedings discontinued against the first four respondents (Brian Jorgensen and the companies he controls) but not the fifth respondent, Patricia Jorgensen.	Affidavit of McGrath filed 29 September 2016 - Ex <b>TGM3</b>