

**COURT OF APPEAL**

**PHILIP McMURDO JA**

**Appeal No 990 of 2017  
QCAT No 449 of 2016**

**SIEGFRIED ETIENNE**

**Applicant**

**v**

**BRUCE HAMLET**

**Respondent**

**BRISBANE**

**FRIDAY, 3 FEBRUARY 2017**

**JUDGMENT**

**PHILIP McMURDO JA:** This is an application made to the Court of Appeal by Mr Siegfried Etienne who has been involved in proceedings in QCAT involving a residential tenancy agreement. An adjudicator has ordered that the agreement be terminated on the ground of the tenant's objectionable behaviour, apparently pursuant to s 297 of the *Residential Tenancies and Rooming Accommodation Act 2008*.

Consequent upon that decision by the adjudicator, a warrant of possession of the subject property issued. Mr Etienne has sought to appeal the decision of the adjudicator. There is an appeal within QCAT for which directions were made by a Senior Member of QCAT on 25 January

2017. According to those directions, it could be expected that that appeal would be determined on the papers at some time after the end of March.

Mr Etienne asked QCAT for a stay of the adjudicator's decision, and in particular, a stay of the enforcement of the warrant. On 4 January 2017, the Senior Member of QCAT, to whom I have referred, made an order which suspended the operation of the termination order and the warrant until further order of the Tribunal. However, on 24 January 2017, the same Senior Member, apparently acting upon the submissions of the other side to this case, ordered that the application to stay the decision of the adjudicator be refused. On 25 January 2017, Justice Thomas was asked to stay the decision of the Senior Member. There is an order on the QCAT file by which his Honour ordered that the application for that stay and for leave to appeal against the order of 25 January be refused "for lack of jurisdiction".

The position then is that, at least from 25 January, QCAT has decided that, notwithstanding the appeal which is current against the adjudicator's decision, the decision should not be stayed and the warrant should remain in force. Mr Etienne, who is without legal representation, told me that he became aware of that position within a day or so of the decision of QCAT. In this Court, Mr Etienne has filed on 1 February a notice of appeal against the decision of Justice Thomas and has filed on the same date an application (which is the one presently before me) to "stay an order to have a warrant issued by Queensland Police Service to vacate premises on 4 February" and to "Overturn an order by Justice Thomas."

The fundamental difficulty, so far as the disposition of this application at present is concerned, is the absence of proper notice to the other parties, who are Mr Bruce Hamlet and, what I am told, is his company, Telmah Holdings Proprietary Limited. The Court does have a power in exceptional circumstances to make an order of an interlocutory nature in the absence of a party who would be affected by it. But the cases in which such orders are made are exceptional, and this is not one of them.

In saying that, I am not overlooking what could be the immediate impact upon Mr Etienne of not having a stay of the warrant, which is that he will have to find somewhere else to live. But the Court must consider the case which could be advanced by each side of the dispute, and from or not long after 25 January, Mr Etienne has been in a position where he knew or should have known that unless he obtained an order from this Court, as he now seeks, the warrant could be given effect before the disposition of his appeal in QCAT.

He has today, I am told, placed the papers within the mailbox of Mr Hamlet at the Gold Coast. But he has not spoken to him, he says, because he is under some impediment from an order of QCAT, an impediment which is not immediately apparent. In any event, allowing for the fact that he is without legal representation, there is still no satisfactory explanation for why Mr Hamlet was not served with an application such as the present one in good time for it to be heard before what seems to be the critical date of tomorrow. In those circumstances, it would be wrong for this Court to make orders without Mr Hamlet having proper notice of the case and an opportunity to argue why they should not be made, as it seems he argued successfully to QCAT.

The order will be that the present application, that is, the application filed in this Court by Mr Etienne on 1 February 2017, be adjourned for hearing before me at 9.15 am on 8 February 2017. It will remain to be seen whether at that date, Mr Hamlet and his company have been duly served and what his response is to the present application. The order will be that the application is adjourned to 8 February at 9.15 am. I will request an urgent transcript of these reasons and ask the registrar to place those reasons on the file.

Mr Etienne has just informed me that he received something from QCAT on the 1st of February to the effect that the warrant would be given effect, and so he indicates by that that it was not until then that he was aware that QCAT would not stay the warrant. Even accepting that to be so, there was sufficient time, if he had acted properly, rather than two days later, to give proper notice to Mr Hamlet and his company of this application.