# DISTRICT COURT OF QUEENSLAND

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| CITATION: | *JA & JB Boyle Pty Ltd v Major Furnace Australia Pty Ltd (No 2)* [2019] QDC 215 |
| PARTIES: | **JA & JB BOYLE PTY LTD AS TRUSTEE FOR THE BOYLE FAMILY TRUST**<br>ACN 102 765 435<br>(plaintiff)<br><br>**v**<br><br>**MAJOR FURNACE AUSTRALIA PTY LTD**<br>ACN 116 352 759<br>(defendant) |
| FILE NO/S: | 99 of 2012 |
| DIVISION: | Civil |
| PROCEEDING: | Costs hearing |
| ORIGINATING COURT: | District Court at Brisbane |
| DELIVERED ON: | 8 November 2019 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | On the papers |
| JUDGE: | Porter QC DCJ |
| ORDER: | **1. The Court declares that the relief obtained by the plaintiff by the judgment in this proceeding could not have been given in a Magistrates Court.**<br><br>**2. The defendant is to pay to the plaintiff interest fixed in the amount of $29,249.86.** |
| CATCHWORDS: | PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – COSTS OF PROCEEDING IN THE WRONG COURT – where the parties contracted for the supply of certain equipment – where the plaintiff brought a claim in the District Court for misleading and deceptive conduct under the *Australian Consumer Law* – where trial judge declared the contract void and ordered the judgment for the plaintiff in the amount of $112,271.10 – whether the proceeding could have been brought in the Magistrates Court<br><br>*Competition and Consumer Act* 2010 (Cth), s 138B<br>*District Court of Queensland Act* 1967 (Qld), s 69(1)(a), s 69(2)(b) |

*Magistrates Court Act* 1921 (Qld), s 4
*Uniform Civil Procedure Rules* 1999 (Qld), r 697

*Ames v Higdon* (1893) 69 LT 292
*Chircher v Edwardstown Carpets* (1993) 60 SASR 503
*K & M Prodanovski Pty Ltd v Northshore Car Rentals Pty Ltd* [2017] NSWSC 625
*Ultra-Tune v Startune Pty Ltd* [1991] 1 Qd R 192
*Vale v TMH Haulage* (1993) 31 NSWLR 702
*Wolff & Anor v Woodbine & Anor* [1929] QWN 7

Meagher, Gummow & Lehane's *Equity: Doctrines and Remedies* (5th ed, 2015)

COUNSEL: S Byrne for the plaintiff
KW Wylie for the defendant

SOLICITORS: Bob Bogie & Co for the plaintiff
Carter Newell Solicitors for the defendant

**INTRODUCTION**

[1] On 17 May 2019 I delivered judgment in the case of *JA & JB Boyle Pty Ltd v Major Furnace Australia Pty Ltd* [2019] QDC 75. The case concerned the plaintiff having contracted in writing to purchase an industrial cremator from the defendant. The substantive dispute concerned whether certain promises made by the plaintiff to the defendant about the performance of the cremator were representations about future matters which constituted misleading or deceptive conduct in breach of ss. 18 and 29 of the *Australian Consumer Law* (**ACL**). The defendant brought a counterclaim for an unpaid instalment of the purchase price of the cremator.

[2] I determined that the promises did constitute misleading or deceptive conduct and made orders in the following terms:

> *1. The Court declares that the contract entered into by the parties for the supply of one HD60 cremator on or about 26 September 2011 is void;*
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> *2. Judgment be entered for the plaintiff in the amount of $112,271.10; and*
>
> *3. The counterclaim be dismissed.*

[3] The parties were then heard as to costs and interest. The defendant was ordered to pay the plaintiff's costs on the standard basis. The parties agree that the defendant is to pay the plaintiff interest fixed in the amount of $29,249.86.

[4] The present dispute concerns the scale of costs to be paid by the defendant to the plaintiff. The defendant submits that the relief obtained by the plaintiff could have been given in the Magistrates Court and, therefore, the appropriate scale of costs is that of the Magistrates Court pursuant to r. 697(2) of the *Uniform Civil Procedure Rules* 1999 (Qld) (**UCPR**). The plaintiff submits to the contrary that its costs are recoverable pursuant to the District Court scale.

[5] Rule 697 of the UCPR relevantly provides:

> (1) Subrule (2) applies if the relief obtained by a plaintiff in a proceeding in the Supreme Court or District Court is a judgment that, when the proceeding began, could have been given in a Magistrates Court.
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> (2) The costs the plaintiff may recover must be assessed as if the proceeding had been started in the Magistrates Court, unless the court orders otherwise.
>
> […]

## JURISDICTION OF THE MAGISTRATES COURT

[6] The proceeding commenced upon the plaintiff filing their claim on 13 November 2012.[1] The plaintiff pleaded that the defendant's conduct amounted to general law misrepresentation as well as misleading and deceptive conduct under Schedule 2 of the *Competition and Consumer Act* 2010 (Cth) (the **ACL**). Relief was sought "under the general law and/or the *Competition and Consumer Act 2010*".[2]

[7] While the plaintiff's pleadings left open the possibility of relief under the general law, Mr Byrne for the plaintiff only pursued the claim under the ACL at trial.[3] As such, orders 1 and 2 of my judgment were made pursuant to the statutory powers conferred by the ACL, a point I made expressly in the reasons:

> [171] […] Mr Boyle sought orders analogous to rescission of the Contract and repayment of sums paid under it. Use of the word rescission, however, should not obscure the fact that the orders being made, while analogous to orders for rescission at common law, are being made in the exercise of the statutory powers conferred under the ACL.

[8] Whether the claim could have been commenced in the Magistrates Court, therefore, depends on whether at 13 November 2012 that court had jurisdiction to give judgment in matters brought pursuant to the ACL. Section 138B of the *Competition and Consumer Act* 2010 (Cth) (**CCA**) (as in effect at the time the proceeding was commenced[4]) conferred jurisdiction on courts of the States and Territories in relation to any matter arising under the ACL. This jurisdiction, however, is confined in two ways:

(a) First, the conferral of jurisdiction is limited to the relevant State court's jurisdictional limits as to "locality, subject matter or otherwise"[5]; and

(b) Second, the conferral of jurisdiction is not to be taken to expand the scope of the remedies which a State court may grant under the law of the State.[6]

[9] Section 4 of the *Magistrates Court Act* 1921 (Qld), as in force at the time the proceeding commenced,[7] empowers the Magistrates Court to hear and determine proceedings to the extent that they fall within prescribed monetary limits and certain subject matter requirements:

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1 Court document 1.
2 Court document 2.
3 TS1-6.5 to .18.
4 Version commencing 1 July 2012.
5 CCA s. 138B(3).
6 CCA s. 138B(5).
7 Reprint 6A.

> Subject to this Act—
>
> (a) every personal action in which the amount claimed is not more than the prescribed limit, whether on a balance of account or after an admitted set off or otherwise; and
>
> (b) every action brought to recover a sum of not more than the prescribed limit, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of the distributive share under an intestacy or of a legacy under a will; and
>
> (c) every action in which a person has an equitable claim or demand against another person in respect of which the only relief sought is the recovery of a sum of money or of damages, whether liquidated or unliquidated, and the amount claimed is not more than the prescribed limit;
>
> may be commenced in a Magistrates Court, and all Magistrates Courts shall within their respective districts have power and authority to hear and determine in a summary way all such actions.

[10] The prescribed limit of the Magistrates Court's jurisdiction was, at the time this proceeding was commenced, and remains $150,000.[8] There is no question that judgment in the amount of $112,271.10 falls within the prescribed monetary limit of the Magistrates Court.

[11] Therefore, the dispute as to whether the Magistrates Court could have given the money judgment in this case concerns whether the subject matter of the plaintiff's claim falls within the limits of s. 4(a)-(c) of the *Magistrates Court Act*. The claim clearly does not fall under s. 4(b). The parties also are *ad idem* that the judgment was made under the statutory powers conferred by the ACL as opposed to any equitable right, as set out above at [7].

[12] Therefore, the scope of the current inquiry is limited to whether the plaintiff's claim for damages under a statute, in this case the ACL, is a "personal action" for the purposes of s. 4(a) such that the Magistrates Court has the power to hear and determine it and if so, whether the Magistrates Court could also have given the declaratory relief obtained.

## "PERSONAL ACTION"

[13] The phrase "personal action" is not defined in the *Magistrates Court Act* and the definition of "action" in s. 2 is of little assistance:

> ***action*** includes an action and proceedings in replevin or interpleader and garnishee proceedings.

[14] My research yielded only one authority which considered the expression in the context of s. 4(a) of the *Magistrates Court Act*. In *Wolff & Anor v Woodbine & Anor* [1929] QWN 7 Macnaughton J considered:

> [Section 4(a)] is confined to personal actions, and that expression bears the meaning given to it by Scrutton L.J. in *R. v. Cheshire County Court Judge and United Society of Boilermakers* ([1921] 2 K.B. 694), where it was held that a County Court had no jurisdiction to entertain a claim for a declaration

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8 *Magistrates Court Act* 1921 (Qld) s. 2.

> that a resolution of a trade union purporting to expel the plaintiff from the union was ultra vires and void, and for an injunction. The learned Judge said at p. 709:
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> > "I refer merely to one authority (*Blackstone's Commentaries*, Vol. III., p. 117) …..'personal actions are such whereby a man claims a debt, or personal duty, or damages in lieu thereof; and likewise whereby a man claims a satisfaction in damages for some injury done to his person or property….'
> >
> > The idea of something which was not a claim for money founded on contract, or a claim for money founded on tort, but was a demand for a declaration I think never occurred to Sir Wm. Blackstone, and I do not think when the Legislature used the phrase 'personal actions' (in s. 3 of the *English County Courts Act*, 1903) it was thinking of any such matter as declarations."

[15] His Honour's ultimate reference to *Blackstone's Commentaries* indicates his consideration of the expression was focussed upon the dichotomy between personal actions and actions in rem, as opposed to whether claims made under statutory provisions might fall within the definition, though where a statute confers a right to damages or to payment of a liquidated sum, one might think that his Honour's construction of the expression would include such claims.

[16] That view is supported by the more recent decision of Priestley JA, with whom Meagher and Sheller JJA agreed, in *Vale v TMH Haulage* (1993) 31 NSWLR 702. In this case his Honour considered a provision conferring jurisdiction on the District Court of New South Wales to hear "any personal action at law where the amount claimed does not exceed $100,000".[9] His Honour concluded that the expression "personal action at law" extended to claims to recover debt from company directors under the *Companies (Victoria) Code*. His Honour reasoned at 77:

> In my view, parliament must have intended in legislating in 1973 in regard to the District Court, whose jurisdiction had become steadily more important throughout this century, to describe its jurisdiction in the legal language of the present day; and, in my opinion the way the term "personal action at law" was understood in 1973 in New South Wales was substantially that described in *The Oxford Companion to Law*, (Professor DM Walker, (1980)) as follows (at 949):
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> > "Personal action. At common law in England, personal actions were distinguished from real actions (qv) and mixed actions (qv). They were claims against persons arising out of contracts or out of torts, the former comprising the actions of account, assumpsit, covenant, debt, and certain others, the latter comprising attaint, case, deceit, champerty, conspiracy, detinue, replevin, trespass, trover, and certain others. All these were abolished in the nineteenth century together with their individual original writs and distinct forms of procedure. The term is now frequently given to an action in personam, where the judgment of the court is a personal one, normally for payment of money, as contrasted with an action in rem, where the plaintiff seeks to make good a claim to or against certain property in respect of which, or in respect of damage done by which, he alleges that he has an actionable demand."
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> On this approach the term would exclude proceedings for possession of land, in respect of which the court is given jurisdiction under s 133 of the *District*

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9 *District Court Act* 1973 (NSW) s. 44.

> *Court Act 1973*, proceedings in equity, some jurisdiction in which is conferred upon the court by s 134 and the quasi equitable proceedings dealt with in s 134A, ss 134B and 135, but not the present proceedings.

[17] Secondary sources have cited *Vale v TMH Haulage* as authority for the proposition that, "actions founded on statute created rights against persons expressed by money judgments are personal actions" for the purposes of the *Magistrates Court Act*,[10] and with good reason in my view. However, *Vale v TMH Haulage* considered legislation made much later than Queensland's *Magistrates Court Act*, a factor which Priestley JA notes in construing the likely intention of the legislation's drafters. More to the point and similarly to the analysis of Macnaughton J in *Wolff v Woodbine*, his Honour considers the meaning of "personal action at law" only in contrast to actions for property.

[18] An apparently conflicting authority appears in the separate judgment of Olsson J in *Chircher v Edwardstown Carpets* (1993) 60 SASR 503. His Honour, in considering whether the scope of the expression "personal action" extended to a claim made pursuant to s. 592 of the *Corporations Law*, reasoned as follows, at 513-514:

> A useful commentary as to the jurisdiction of Local Courts is to be found in *Hannan's Local Court Practice*, 3rd ed, pp 86–7. Broadly speaking, personal actions were those in which the claim was for debt or damages arising out of contract or for the recovery of a personal chattel or for damages for an injury to person or property arising out of tort. As Napier J pointed out in *Homburg v Fromm* (1951) SASR 97 at 101 the "personal actions" referred to in the prior Act are the causes of action allowed (under that name) by the courts of common law, prior to the Judicature Act.
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> Personal actions were, historically, one of three classes of action which, in their totality, comprised the span of what were known as actions at law. These were real actions, personal actions or mixed actions. As their characterisation implies, real actions related to claims in which a plaintiff sought to recover lands, tenements and hereditaments. The mixed actions were those which had features both of personal and real actions, some real property right being demanded together with personal damages for a wrong said to have been sustained. (As to this see *Smith's Action at Law* (1873) p 44 et seq and *Halsbury's Laws of England* 3rd ed, Vol 1, p 21.)
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> As is pointed out by the learned author of *Halsbury's Laws of England*, the primary division of personal actions was, historically, into those arising ex contractu and those arising ex delicto. The learned author of *Hannan* relies upon the old case of *Stuart v Jones* (1852) 1 E & B 22 as authority for the proposition that actions by individuals based on special Acts fell within the class of personal actions recognised, as such, by the common law. That decision is not referred to in *Halsbury*, nor is it adverted to in Smith's *Action at Law*, which was written in 1873 and expresses the same basic classification as Halsbury. Neither is it adverted to in Sutton, *Personal Actions at Common Law* (1929), which is to the same general effect as *Smith*.
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> The reason for the lastmentioned omissions readily becomes apparent upon a study of the legislative environment which gave rise to the decision in *Stuart v Jones*, supra. That case related to statutory provisions authorising the imposition of a paving rate which, inter alia, could "be sued for and recovered, together with full costs of suit, in any of Her Majesty's Courts of Record at Westminster" (1 & 2 Vic.c.xxxiii, s 18 — local and personal, public). That statute amended the earlier 3 Will IV c.68 which stipulated that relevant rates or assessments, where they amounted to or exceeded the sum

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10 Halsbury's Laws of Australia at [125-3015].

> of five pounds, could be recovered by action of debt or on the case in any of His Majesty's Courts of Record at Westminster.
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> A subsequent statute 9 & 10 Vic.c.95, by s 58, revised the pre-existing system of county courts and conferred a specific right to recover debts, by way of pleas of personal actions, up to a certain limit in such courts.
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> A Full Bench held that, as the statutory provision of 1 & 2 Vic.c.xxxiii conferred a specific right of personal action in the Courts of Westminster and the later statute vested in the County Court jurisdiction "to hold a … [similar] personal plea", the claim made was justiciable in the County Court.
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> The decision in *Stuart v Jones* is actually cited as authority in relation to questions of non-exclusivity of jurisdiction, rather than for the general proposition advanced in *Hannan* that any money claim under a special statute constitutes a personal action, within the meaning of ss 31 or 32 of the *Local and District Criminal Courts Act*. *Stuart v Jones* was, in my view, very much the product of particular legislation and did not purport to extend what was the then well settled notion of what constituted a personal action at common law, as adverted to in Halsbury and the texts to which I have referred.

[19] His Honour concluded that the jurisdiction conferred on the South Australian Magistrates Courts to hear personal actions did not extend to claims made under statute.

[20] However, I note the judgment of McPherson J in *Ultra-Tune v Startune Pty Ltd* [1991] 1 Qd R 192. His Honour, with whom de Jersey and Lee JJ agreed, noted at 197 that a claim for damages under statute may be regarded as a personal action for the purposes of s. 66(1)(a) of the *District Court Act* 1967 (Qld). This section conferred jurisdiction on the District Court of Queensland and was drafted in substantially the same terms as s. 4(a) of the *Magistrates Court Act*.

[21] McPherson J relied on *Ames v Higdon* (1893) 69 LT 292, which concerned a claim to recover damages for the improper exercise of the power of sale contained in a mortgage deed. This claim was brought by the plaintiff under s. 21(2) of the *Conveyancing and Law of Property Law* 1881. On appeal, Pollock B and Kennedy J, held that the claim was made under statute and that, therefore, the County Court had jurisdiction to hear the claim under s. 56 of the *County Court Act* 1888. This section conferred jurisdiction on the County Count to hear and determine personal actions.

[22] I can see no good reason not to follow the reasoning and conclusions of the Full Court on the question given the similarity in language of the two provisions. Further, it would seem to me to be a strange conclusion that personal actions would not include claims for liquidated sums or damages arising from statute, given that Parliament in creating such claims is appropriating the common law concepts which traditionally underpinned personal actions. Accordingly the Magistrates Court had jurisdiction to make the money order which was made in this proceeding.

## THE DECLARATORY ORDER

[23] The above conclusion does not dispose of the matter however. It remains to deal with the declaratory order. There is no general power conferred on the Magistrates Court to grant a declaration in s. 4 or in any other provision of the Magistrates Courts Act. Power to grant declaratory relief must be found in statute, at least for

inferior Courts.[11] This Court has statutory power to grant declaratory relief but that power is conferred, relevant to this case, by ss. 69(1)(a) and (2)(b) *District Court of Queensland Act* 1967. No equivalent provision exists so far as I could determine conferring general power to grant declaratory remedies on the Magistrates Court.

[24] Rule 697 takes as the relevant consideration the relief obtained in a proceeding. Here, the relief obtained included the declaration. It would not seem to be relevant whether the declaratory relief was strictly necessary or not, but in any event it was highly desirable at the least (and probably necessary) because absent the declaration, the contract would have remained on foot and thereby obstructed the granting of the relief sought, being repayment of the purchase price paid under the contract.

[25] The defendant relied on *K & M Prodanovski Pty Ltd v Northshore Car Rentals Pty Ltd* [2017] NSWSC 625. That case was concerned with the scope of the District Court of NSW to grant equitable remedies. The defendant relied on that case for the proposition that a claim for statutory rescission under s. 237 ACL arises under statute not in equity. That proposition can be accepted. However, it fails to address the question of whether the Magistrates Court has power to grant a declaratory order as a remedy in a proceeding.

**CONCLUSION**

[26] On the basis of the above analysis, I find that the plaintiff could not have obtained the declaration granted in the proceeding in the Magistrates Court and thus Rule 697 is not engaged.

[27] Exercising the power that this Court does have to grant declaratory relief, it seems appropriate to quell the dispute between the parties on the application of r. 697(1) by making a declaration to that effect.

[28] I consider that the declaration should be in broad terms, even though it is arguable that money order could have been made in the Magistrates Court, to track the words of r. 697(1). It is worth noting however that it might be argued that the money order could in fact not have been made by the Magistrates Court if it was in fact necessary to set aside the contract as a condition of making the order for repayment of the purchase price. However it is unnecessary to decide that matter.

[29] I also order that the defendant is to pay to the plaintiff interest fixed in the amount of $29,249.86.

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[11] Whether the statutory basis of the power of the Supreme Court of Queensland and other superior courts to grant declaratory relief is necessary or not is open to debate. However that debate does not admit of the possibility of inferior Courts granting declaratory relief without a statutory basis: see Meagher Gummow & Lehane's *Equity: Doctrines and Remedies* (5th ed) at [19-035] to [19-110].