

# DISTRICT COURT OF QUEENSLAND

CITATION: *Stramit Corporation Pty Limited v Kay & Anor* [2020] QDC 207

PARTIES: **STRAMIT CORPORATION PTY LIMITED ACN 005 010 195 REAL PROPERTY CONSULTANTS PTY LTD**  
(plaintiff)

v

**DARRELL SANDER KAY**  
(first defendant)

AND

**KATRINA BRIDGET KAY**  
(second defendant)

FILE NO/S: BD228 of 2019

DIVISION: Civil

PROCEEDING: Reasons for Decision

ORIGINATING COURT: District Court Brisbane

DELIVERED ON: 28 August 2020

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGES: Sheridan DCJ

ORDER: **1. Judgment entered by registrar on 6 June 2019 be set aside.**  
**2. Judgment will be entered for the plaintiff in an amount of \$45,251.40.**  
**3. Request for issue of an Enforcement Warrant is remitted back to the registrar.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – AMENDING, VARYING AND SETTING ASIDE JUDGMENTS AND ORDERS – OTHER CASES – where default judgment was entered by a registrar pursuant to r 283 *Uniform Civil Procedure Rules* 1999 (Qld) (UCPR) – where grant of default judgment referred to District Court Judge pursuant to r 982 UCPR – where both liquidated amounts and declaration claimed by plaintiff – whether registrar at first instance had power to enter default judgment – whether default judgment irregularly entered

*Uniform Civil Procedure Rules* 1999 (Qld), r 282, r 283, 2

288, r 982

*Crane Distribution Ltd v Brown* [2011] QSC 090, cited  
*Laminex Group Pty Ltd v Fresh Electrical and Data Pty Ltd & Anor* [2017] QDC 181, cited  
*Wallace v Witan Investments (Qld) Pty Ltd* (QSC, Weld M, No 86-070, 12 March 1986, unreported), cited

### **Background**

- [1] On 24 January 2019, the plaintiff filed a claim and statement of claim against two defendants who operated a plumbing business in partnership. The claim sought an amount of \$92,828.34 together with a declaration that pursuant to a guarantee agreement between the plaintiff and the defendants, the defendants had granted an equitable charge over their interests in certain lands.
- [2] Pursuant to the statement of claim, the amount of \$92,828.43 comprised unpaid invoices in the sum of \$87,491.75, legal costs in the sum of \$712 and recovery costs in the sum of \$4,624.49, monies owing pursuant to the terms of an agreement between the plaintiff and the defendants. The unpaid invoices related to goods supplied by the plaintiff to the partnership under the agreement.
- [3] The agreement required the partnership to pay interest on monies due at the rate prescribed from time to time in the *Penalty Interest Rate Act* 1983 (Vic) from the due date for payment until the actual date of payment. From 1 February 2017, the prescribed rate has been ten percent per annum.
- [4] Pursuant to the terms of the guarantee between the plaintiff and the defendants, the defendants guaranteed the payment of moneys owing by the partnership to the plaintiff.
- [5] The statement of claim did not set out the terms of the guarantee, but it was pleaded that a term of the guarantee was that the defendants charged their interest in certain real property to secure their indebtedness to the plaintiff.
- [6] Following a request made by the plaintiff, default judgment was entered by a registrar on 6 June 2019 in an amount of \$96,849.81, which sum included an amount of \$5,222.11 for interest and \$4,135.95 for costs. Interest was permitted to be claimed at the default rate of ten percent.
- [7] On 2 August 2019, an amount of \$56,156.02 was paid by the defendants to the plaintiffs reducing the amount of the indebtedness of the defendants to the plaintiff to an amount of \$40,693.79.
- [8] On 6 August 2020, an application was made by the plaintiff to the court for the issue of an enforcement warrant authorising the enforcement officer to seize and sell all real and personal property of the defendants to an amount of \$45,377.75, being the amount said to be currently owing by the defendants to the plaintiff.

### **Registrar Referral**

- [9] Upon receiving the request for the issue of the enforcement warrant, the Registrar (before whom the application was brought) pursuant to r 982 of the *Uniform Civil Procedure Rules 1999 (Qld) (UCPR)* referred for the decision of a judge the question as to whether the default judgment issued on 6 June 2019 had been irregularly entered and how to progress the matter.
- [10] The matter came before me on the basis of that referral.
- [11] By the referral, the registrar had raised a question as to whether the registrar (who had given the default judgment) had power to grant the default judgment, as the claim was for both a liquidated amount together with a declaration. At the time judgment was entered it did not appear that the claim for declaratory relief had been abandoned.
- [12] Following the making of the referral, submissions were provided on behalf of the plaintiff by an email directed to my associate dated 18 August 2020. The email confirmed the plaintiff's instructions were not to abandon the claim for declaratory relief. The plaintiff's solicitors expressed the view that the registrar could give judgment pursuant r 283 of the UCPR in circumstances where the claim sought both "a debt or liquidated demand" and other relief. The plaintiff's solicitors did not consider that the plaintiff was required to abandon the claim for declaratory relief and specifically did not do so. The plaintiff's solicitor relied on the absence of the word "only" after "debt or liquidated demand" in r 283.

### **Default Judgment**

- [13] Chapter 9 Division 2 of the UCPR applies if a defendant in a proceeding started by claim has not filed a notice of intention to defend and the time allowed under the rules has ended. The rules permit a plaintiff to file a request for judgment upon proof of service of the claim on the defendant.<sup>1</sup>
- [14] Rules 283 to 287 permit the requests for judgment to be made and for the court, as constituted by the registrar, to give judgment where the plaintiff's claim against the defendant is for the claims as specified in those rules.
- [15] Rule 283 permits the court, as constituted by the registrar, to give judgment where the claim is for "a debt or liquidated demand, with or without interest."
- [16] Rule 284 refers to a claim for "unliquidated damages, with or without another claim", r 285 refers to a claim for "detention of good only", r 286 refers to a claim for "recovery of possession of land only" and r 287 applies if the plaintiff's claim for relief "include 2 or more of the claims for relief mentioned in rules 283 to 286, and no other claim."
- [17] Rule 288 permits the plaintiff to apply to the court for a judgment, as distinct to the court as constituted by the registrar, if a defendant is in default and the plaintiff is not entitled to apply for judgment under rule 283, 284, 285 or 286. On such application, "the court may give the judgment it considers is justified on the pleadings even if the judgment was not claimed."

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<sup>1</sup> UCPR, r 282.

- [18] The extent of the power given to the registrar under r 283 must be viewed in the context of the whole of Division 2. The approach which has been adopted is that r 283 gives to the registrar powers to enter judgment by default where the relief claimed is for a debt or liquidated demand only.<sup>2</sup>
- [19] In circumstances where, as here, the claim is for monies owing together with a declaration, and where the claim for declaratory relief has not been abandoned, the registrar has no power pursuant to r 283 to grant judgment in default.
- [20] Accordingly, the judgment entered by the registrar on 6 June 2019 was entered irregularly and must be set aside.

### Next Steps

- [21] The matter is now before me and, pursuant to r 288 of the UCPR, I have power to give the judgment which I consider is “justified on the pleadings”.<sup>3</sup>
- [22] In the circumstances, and based on the sworn statement filed by the solicitor for the plaintiff dated 6 August 2020 confirming the indebtedness of the defendants, it is appropriate that I proceed to enter judgment for the plaintiff.
- [23] The sworn statement disposed to the current indebtedness of the defendants to the plaintiff being an amount of \$45,377.75. That amount was made up of:
- (a) \$40,693.79 being the amount of the debt still owing;
  - (b) \$3,975.91 for interest accrued to 6 August 2020 calculated pursuant to s 59 of the *Civil Proceedings Act* 2011 (Qld) on the outstanding balance from the date of payment of \$56,156.02 made on 2 August 2019;
  - (c) \$467.40 for the costs of preparing the warrant;
  - (d) \$192 for incidental expenses, Registration of Writ with Land Titles Office; and
  - (e) \$48.65 for interest calculated at the rate of \$6.95 per day from 6 August 2020 to 13 August 2020.
- [24] The amount of the debt still owing as detailed in the statement was based on the amount of the judgment debt of \$96,849.81 as at 6 June 2019, being the date of the judgment, less the amount of \$56,156.02 paid by the defendants to the plaintiff on 2 August 2019.
- [25] In now proceeding to enter judgment, it is necessary to have regard to the amount of the claim as detailed in the statement of claim and to deduct from that amount any payments made. To the outstanding amounts will need to be added interest. Pursuant to the agreement, from the due date of payment up to the date of judgment interest is payable on the balance outstanding at the rate of ten per cent per annum.<sup>4</sup> In proceeding to obtain default judgment on 4 June 2019, for the purpose of

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<sup>2</sup> *Wallace v Witan Investments (Qld) Pty Ltd* (QSC, Weld M, No 86-070, 12 March 1986, unreported); *Crane Distribution Ltd v Brown* [2011] QSC 090, [17]; *Laminex Group Pty Ltd v Fresh Electrical and Data Pty Ltd & Anor* [2017] QDC 181, [22].

<sup>3</sup> UCPR, r 288(3).

<sup>4</sup> Statement of Claim filed 4 June 2019, [12].

calculating the claim for interest, the due date of payment was said to be 1 November 2018.<sup>5</sup>

[26] Performing that calculation, the amount owing is \$41,115.45, calculated as follows:

Principal	Date From	Date To	Cash Rate	Default Rate	Days	Interest
\$87,491.75	1/11/2018	31/12/2018	0	10	61	\$1,462.19
\$87,491.75	1/1/2019	8/3/2019	0	10	67	\$1,606.01
<b>Part Payment 1: 50 deducted from debt amount. \$87,441.75 remaining.</b>						
\$87,441.75	9/3/2019	15/3/2019	0	10	7	\$167.70
<b>Part Payment 2: 50 deducted from debt amount. \$87,391.75 remaining.</b>						
\$87,391.75	16/3/2019	21/3/2019	0	10	6	\$143.66
<b>Part Payment 3: 50 deducted from debt amount. \$87,341.75 remaining.</b>						
\$87,341.75	22/3/2019	2/8/2019	0	10	134	\$3,206.52
<b>Part Payment 4: 56156.02 deducted from debt amount. \$31,185.73 remaining.</b>						
\$31,185.73	3/8/2019	31/12/2019	0	10	151	\$1,290.15
\$31,185.73	1/1/2020	28/8/2020	0	10	241	\$2,053.49
Interest payable:						\$9,929.72
<b>Totals</b>						
Total days:						667
Remaining debt:						\$31,185.73
Interest payable:						\$9,929.72
Amount payable (remaining debt + interest payable):						\$41,115.45

[27] To that amount is to be added the amount of \$4,135.95 for costs, made up of the amounts as stated in the request for default judgment and the supporting affidavit sworn by the solicitor of the plaintiff on 4 June 2019.

[28] Accordingly, judgment will be entered for the plaintiff in an amount of \$45,251.40.

[29] The request for the issue of an Enforcement Warrant is remitted back to the registrar.

<sup>5</sup> In paragraph 13 of the Statement of Claim, the due date for payment is pleaded as 1 September 2018.