

# DISTRICT COURT OF QUEENSLAND

CITATION: *Barclay v See Well Law Practice & Anor* [2022] QDC 300

PARTIES: **SUSAN BEVERLY BARCLAY AS PERSONAL  
REPRESENTATIVE IN THE ESTATE OF OLIVE  
ELMS, DECEASED**  
(applicant)

**v**

**SEE WELL LAW PRACTICE PTY LTD as trustee for  
THE SEE WELL LAW TRUST trading as SEE WELL  
LAW**  
(first respondent)

**DONNA MAREE SEWELL**  
(second respondent)

FILE NO/S: D144/2020

DIVISION: Civil

PROCEEDING: Application

DELIVERED ON: 4 November 2022 (ex-tempore)

DELIVERED AT: Maroochydore

HEARING DATE: 4 November 2022

JUDGE: Cash DCJ

ORDERS: **Order as per amended draft**

CATCHWORDS: PROCEDURE – ENFORCEMENT – where judgment was entered in this matter against the respondent – where the respondent was unsuccessful on appeal and further costs were ordered against the respondent – where at the auction of the property obtained by enforcement warrant the sale did not reach the reserve price – whether the property should be sold at the best price obtainable under the Uniform Civil Procedure Rules 1999 (Qld) r 833

APPEARANCES: Sajen Legal for the applicant  
Sunshine Coast Legal for the respondents

[1] HIS HONOUR: This is an application principally for orders pursuant to rule 833 of the *Uniform Civil Procedure Rules 1999* (Qld) that property be sold for the best price obtainable. It arises in circumstances where, as a result of orders that I made last year, a judgment debt is owed by the second respondent to the applicant. There was, pursuant to that order, a warrant obtained, and real property owned by the second respondent went to auction under the supervision of the Court recently. It was passed in without reaching the reserve price. It is in those circumstances that

the applicant now seeks an order for the sale of the property at the best obtainable price.

- [2] There is no provision in the Rules for proceeding in that way other than obtaining an order under rule 833, so it is understandable in the circumstances that the applicant has brought this application. Part of the application is an application to extend the writ which has been registered over the real property pursuant to the *Land Title Act*, and there is no dispute that that would be appropriate whatever the outcome of today's application might be.
- [3] The respondent to the application did resist the orders on the basis that arrangements had been made that would see the judgment debt satisfied on Monday of next week. That may well be the case, but it seems to me that no prejudice would accrue to the respondent if orders of the kind sought were made today, because as soon as the judgment debt is satisfied the warrant will cease to have effect and there would be no risk of the property being put for sale. By making the orders today it protects the position of the applicant at no real harm to the respondent and will hopefully prevent any further litigation in respect of this matter.
- [4] For those reasons I will make orders in terms of a draft that I have amended, which will be to this effect: (1) pursuant to rule 833(2) of the *Uniform Civil Procedure Rules 1999* (QLD), the property described as lot 18 on registered plan 181298, being the whole of the land contained in title reference 164321921, and which is the subject of the enforcement warrant for the seizure and sale of property issued by this honourable Court on 17 March 2022 be sold at the best price obtainable.
- [5] There will be an order (2): such sale is not to take place before 30 November 2022. What was in the draft order (2) becomes (3), which is an order that, pursuant to section 117(b)(ii) of the *Land Title Act* (Qld), the time that the writ of execution (dealing number 721708469) binds the land be extended for a period of 12 months. And what was draft order (3) becomes (4): the second respondent pay the applicant's costs of the application fixed in the sum of \$5000.
- [6] I have initialled the amended draft order and will place with the papers.