

# LAND COURT OF QUEENSLAND

CITATION: *Allan & Ors v Fraser Coast Regional Council* [2013] QLC 28

PARTIES: Blodwen Patricia May Allan, Esther Ann Allan and Donna Rebecca Allan  
(applicants)

v.

Fraser Coast Regional Council  
(respondent)

FILE NO: AQL627-11

DIVISION: General Division

PROCEEDING: Application to withdraw by the solicitors acting on behalf of the applicants

DELIVERED ON: 24 May 2013 [Ex tempore]

DELIVERED AT: Brisbane

HEARD ON: 24 May 2013

HEARD AT: Brisbane

MEMBER: PA Smith

ORDER: **Leave is granted to Messrs Thynne & Macartney to withdraw as solicitors on the record for the applicants.**

CATCHWORDS: PRACTICE AND PROCEDURE — Application by solicitors for applicants for leave to withdraw — factors to be considered — non payment of fees — Affidavit evidence of warning given to applicants of consequence of not paying fees

*Uniform Civil Procedure Rules 1999*  
*Rule 4, Land Court Rules 2000*

*Allan & Ors v Fraser Coast Regional Council (No. 2)* [2013] QLC 29  
*Caldwell v Treloar* (1982) 30 SASR 202  
*Commonwealth Bank of Australia v Davies* (2004) 1QdR 363

APPEARANCES: Mr Hinson, SC instructed by Thynne & Macartney for the applicants  
Ms Esther Allan, in person  
Mr Anderson of Counsel instructed by Allens for the respondent

*[The matter was called on for the hearing of an application made by Thynne & Macartney to withdraw from the record as the solicitors acting on behalf of the applicants in this matter. The application was supported by Affidavit material of Mr Peter Anthony Archos sworn on 23 May 2013. The Affidavit material explained that fees necessary for the conduct of the hearing had not been paid by the applicants, despite warning of the consequences should the fees not be paid. There was no reason given as to why the applicants had not paid the necessary fees. The application was not opposed by the respondent.*

*Ex tempore reasons were then delivered.]*

- [1] I have before me an application that has been brought by the solicitors for the applicants in this matter seeking leave to withdraw.
- [2] The application has been made in a formal sense and supported by the Affidavit of Mr Peter Anthony Archos, an equity partner of Thynne & Macartney, currently the solicitors for the applicants.
- [3] The heart of the dispute appears to be that the matter has been set down for hearing commencing on Monday, 3 June 2013, and by arrangement between the solicitors for the applicants and their clients, payment of fees and disbursements, in particular, Senior Counsel's fees, were required to be paid in the period no later than 14 days prior to the commencement of the hearing.
- [4] The Affidavit of Mr Archos sets out the various contact that has been had between the solicitors and the applicants and states that to date, the fees remain outstanding.
- [5] The *Land Court Rules 2000* do not provide for any Rules of Court covering this circumstance. Therefore, in accordance with r4 of those Rules, the provisions of the *Uniform Civil Procedure Rules 1999* (UCPR) apply. Rule 990 and 991 of the UCPR are relevant, they are as follows:

**“990 Application for leave to withdraw as solicitor**

- (1) Unless the court orders otherwise, a solicitor may apply for leave to withdraw from the record in a proceeding only if, at least 7 days before applying for leave, the solicitor gives written notice (***notice of intention to apply for leave to withdraw***) to the client—
  - (a) stating the solicitor's intention to withdraw; and
  - (b) asking the client, within 7 days after the date of the notice, to—
    - (i) appoint another solicitor; or
    - (ii) file and serve a notice under rule 986(2) that the client acts in person; and
  - (c) stating that, if the client does not comply with the requirements of the notice—
    - (i) the solicitor may apply to the court for leave to withdraw; and
    - (ii) the client may be ordered to pay the solicitor's costs of the application.
- (2) The application for leave to withdraw must be served on the client.
- (3) A solicitor may give notice of intention to apply for leave to withdraw, or serve an application for leave to withdraw, by posting it to the client at the residential or business address of the client last known to the solicitor.

**991 Leave to withdraw as solicitor**

- (1) A solicitor may withdraw from the record only with the court's leave.

- (2) If a solicitor's client does not comply with the requirements of a notice of intention to apply for leave to withdraw, the court may give the solicitor leave to withdraw from the record and may make an order for costs.
- (3) A solicitor who withdraws from the record must file a notice of withdrawal of solicitor.
- (4) A solicitor's withdrawal does not take effect until the notice of withdrawal of solicitor is filed.
- (5) A notice of withdrawal of solicitor must be in the approved form.
- (6) On withdrawing from the record, the solicitor must serve the notice of withdrawal of solicitor on all other parties other than a party in default of notice of intention to defend.

- [6] The key component in this matter is that in all the circumstances, seven days' notice is required to be provided by the solicitor to the client of their intention to seek leave to withdraw. In the case at hand, the notice, such as it was, was only provided to the clients on Tuesday, 21 May 2013, some three days ago.
- [7] In circumstances where the seven days' notice has not been provided, the solicitors may seek leave of the Court. That application has, of course, been made today.
- [8] The matter is of some concern, due to the fact that the hearing has been set down for commencement on Monday, 3 June 2013 and arrangements have been made, around which a circuit of this Court has been organised, for an inspection to occur of both the subject property and sale properties on Thursday, 30 May 2013.
- [9] I take those matters simply on notice at this stage, and of course separate orders and discussion are to occur between the parties, dependent upon my reasoning on the application for withdrawal.
- [10] Mr Hinson has very helpfully referred the Court to relevant authorities. The first authority is the South Australian case of *Caldwell v Treloar*<sup>1</sup> and I note therein the decision of Walters J where in similar circumstances, he allowed the withdrawal of a solicitor.
- [11] I have also been referred by Mr Hinson to the Supreme Court decision of *Commonwealth Bank of Australia v Davies*.<sup>2</sup> In that case, leave to cease acting as a solicitor was sought on the very eve of a hearing, the application having been made in the morning of a matter that was due to commence at noon that day. Leave was granted, but Wilson J ordered that that order be stayed for one week to allow for material to be served and exchanged and also for negotiations of the parties to continue.
- [12] I have difficulties in this case in allowing for the stay of any order for one week, because that would require the solicitors, as matters currently stand, to attend the inspection to occur on Thursday, 30 May 2013.
- [13] I do intend to allow leave for the solicitors to withdraw, but I will hear from Mr Hinson further regarding the point of allowing for service to occur through the solicitors.

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<sup>1</sup> (1982) 30 SASR 202.

<sup>2</sup> (2004) 1 QdR 363.

*[Following further submissions, it became clear that alternate means of service could be made - see Allan & Ors v Fraser Coast Regional Council (No. 2) [2013] QLC 29. The order was then pronounced.]*

**Order**

Leave is granted to Messrs Thynne & Macartney to withdraw as solicitors on the record for the applicants.

**P A SMITH  
MEMBER OF THE LAND COURT**