

SUPREME COURT OF QUEENSLAND

CITATION: *Warren v Queensland Law Society; Forster & Ors (as Receivers of the Law Practice “Lexie Warren Solicitor”) v Warren* [2015] QSC 364

PARTIES: **ALEXIA MARGARET WARREN**
(appellant)
v
QUEENSLAND LAW SOCIETY
(respondent)

GLENN ASHLEY FORSTER, WILLIAM THOMAS HOURIGAN, MICHAEL CRAIG DRINKALL, DEBORAH YUMIN MOK, SHERRY JANETTE BROWN AS RECEIVERS OF THE LAW PRACTICE “LEXIE WARREN SOLICITOR”
(applicant)

v
ALEXIA MARGARET WARREN
(respondent)

FILE NO/S: BS 683 of 2015; BS 5840 of 2015

DIVISION: Trial Division

PROCEEDING: Appeal; Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 18 December 2015

DELIVERED AT: Brisbane

HEARING DATE: 31 August 2015 - 2 September 2015, further written submissions filed 24 September 2015, 6 October 2015, 21 October 2015.

JUDGE: Martin J

ORDER: **683 of 2015:**

1. Appeal dismissed.

5840 of 2015:

1. Application granted.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – PRACTISING CERTIFICATES – REFUSAL TO ISSUE – where the Queensland Law Society (‘QLS’) – appointed receivers to the appellant’s law practice – where those receivers seek orders requiring the appellant to produce

regulated property in order to carry out the receivership – where the appellant appeals the decision of the QLS to appoint receivers to her law practice – where the QLS refused to renew the appellant’s practising certificate – where the appellant claims that her practising certificate was renewed prior to that decision being made – where the QLS appointed receivers to the law practice on the basis that the appellant is no longer an Australian legal practitioner – whether the decision to appoint receivers was beyond power on the basis that the appellant’s practising certificate was renewed prior to the decision to refuse to renew it – whether the appellant has refused to give the regulated property to the appointed receivers

Legal Profession Act 2007, s 6, s 47(3), s 51, s 494, s 497, s 498, s 517, s 531, s 683, s 712

Queensland Law Society Indemnity Rule 2005, Rule 9

COUNSEL: A Warren, appellant in 683 of 2015 and respondent in 5840 of 2015 appeared in person

LS Reidy for the respondent in 683 of 2015 and applicant in 5840 of 2015

SOLICITORS: Queensland Law Society Incorporated for the respondent.

- [1] Alexia Warren is a sole practitioner who practised as ‘Lexie Warren Solicitor’. Ms Warren applied for renewal of her unrestricted practicing certificate on 30 June 2014. When considering that application, the Queensland Law Society (‘QLS’) became aware of matters which it regarded as constituting breaches of Ms Warren’s professional duties.
- [2] On 6 November 2014, the Executive Committee of the Council of the Queensland Law Society (‘the QLS Executive Committee’) determined not to renew Ms Warren’s practising certificate.
- [3] A day later, Bronwyn Neroni, the QLS Corporate Secretary, issued an Information Notice to Ms Warren pursuant to s 51(8)(a) of the *Legal Profession Act 2007* (‘the Act’). The Information Notice set out that the QLS Executive Committee had determined that Ms Warren was not a fit and proper person to continue to hold an unrestricted practising certificate and that her practising certificate would not be renewed. An Amended Information Notice was issued on 2 December 2014, amending the decision’s operative date to 17 December 2014.
- [4] On 17 December 2014, the Chief Executive Officer of the QLS sent Ms Warren a letter advising her that the QLS would be placing before the QLS Executive Committee a submission recommending the appointment of receivers to the law practice ‘Lexie Warren Solicitor’.
- [5] The QLS Executive Committee resolved to appoint the applicants in 5840 of 2015 (‘the Receivers’) as receivers of Lexie Warren Solicitor on 24 December 2014 as Ms Warren had ceased to be an Australian Legal Practitioner. That same day the

QLS Executive Committee gave notice of the appointment of receivers which set out that the Receivers were required to, amongst other things, take possession of the regulated property. On 9 January 2015 an ‘Instrument of Appointment of Queensland Law Society Officer as Receiver’ was signed.

- [6] The Receivers sent Ms Warren the notice of appointment and a letter requiring her to make the regulated property available, in compliance with s 517 of the Act on 9 January 2015. Ms Warren has provided some, but not all, all of the required regulated property to the Receivers.
- [7] There are two matters before the Court: an appeal by Ms Warren against the decision of the QLS to appoint receivers, and an application by the Receivers for an order that Ms Warren deliver up certain documents and other material. By an order of Flanagan J made on 1 July 2015, these matters are being heard together.

Appeal by Ms Warren

- [8] Under s 531 of the Act Ms Warren appeals the appointment of the Regulators. That section provides:

“531 Appeal against appointment

- (1) The following persons may appeal to the Supreme Court against the appointment of an external intervener for a law practice-
- (a) the practice;
 - (b) an associate of the practice;
 - (c) any person authorised to operate a trust account of the practice;
 - (d) another person whose interests may be adversely affected by the appointment.
- ...
- (3) The Supreme Court may make any order it considers appropriate on the appeal, including, for example, declaring the appointment of an external intervener for a law practice is invalid or terminated.
- (4) The appointment of an external intervener for a law practice is not stayed by the making of an appeal, and the external intervener may perform his or her functions and exercise his or her powers as an external intervener during the currency of the appeal except to the extent, if any, that the Supreme Court otherwise directs.”

- [9] This appeal is subject to the provisions of Chapter 18 Part 3 of the *Uniform Civil Procedure Rules 1999* (“Other appeals”) and, thus, is an appeal by way of rehearing¹.

¹ See r 785 and r 765, UCPR.

Application by the Receivers

- [10] The Receivers apply for orders requiring Ms Warren to deliver up the regulated property of the law practice ‘Lexie Warren Solicitor’ and information required to access electronic devices. ‘Regulated Property’ is a term defined in s 494 of the Act and, in summary, includes the following:
- (a) Any trust money or trust property held, received or receivable by the law practice, including any income derived with that money or property;
 - (b) documents or records of any description relating to that property; and
 - (c) any computer hardware or software or other devices relating to that property from which records may be produced or reproduced.

Issues for determination

- [11] Pursuant to a direction, the QLS and the Receivers filed a list setting out what they submit are the issues for determination, that is:
1. Did the QLS renew Ms Warren’s 2013-2014 Practising Certificate before the decision of the Society on 6 November 2014 to refuse to renew Ms Warren’s 2013-2014 Practising Certificate?
 2. For the Receiver’s application:
 - (a) Have the Receivers required Ms Warren to give possession of the regulated property of the law practice to them for the purposes of s 517 of the Act?
 - (b) If ‘yes’ to (a), has Ms Warren contravened the requirement of the Receivers?
 - (c) If ‘yes’ to (b), should the Court make an order in terms of the application?
 3. What order for costs should be made?
- [12] Despite the simplicity of the issues as stated by the QLS and the Receivers, Ms Warren’s Amended Notice of Appeal sets out nine grounds of appeal, each outlining a different error of law purportedly made by the QLS. Ms Warren did not file an outline of submissions prior to the hearing.
- [13] Both parties were given leave to file written closing submissions. In Ms Warren’s submissions she pursued several new grounds of appeal not set out in her Amended Notice of Appeal. She did not seek leave to further amend the Notice of Appeal and I will not allow her to pursue these new grounds.
- [14] During the hearing, Ms Warren accepted that the questions for determination in the appeal were, put briefly:
- (a) whether the QLS had already renewed her 2013-2014 practising certificate before the decision of 6 November 2014, and, if it had,
 - (b) whether it could determine that external intervention in relation to Lexie Warren Solicitor was warranted on the basis that she had ceased to be an Australian legal practitioner.

Did the QLS renew the 2013-2014 practising certificate before 6 November 2014?

The online record

- [15] Ms Warren's submission that her 2013-2014 practising certificate was renewed before 6 November 2014 stems entirely from her observation of an entry on the QLS online portal.
- [16] Members of QLS may view their membership details through an online portal. It is password protected and only the member can see the member's details through that portal. Importantly, and obviously, the entries able to be seen through the portal are not available to the public. When Ms Warren viewed her online portal there was a line item showing that she held an unrestricted practising certificate for the 2014-2015 financial year.
- [17] Ms Warren had lodged her application for renewal of her 2013-2014 practising certificate on 30 June 2014. The fees required to be paid with the renewal application did not reach QLS until 4 July 2014.
- [18] One of the matters which arose during evidence was the operation of the QLS Client Relationship Management System (CRM). It is a program which, upon certain criteria being met, automatically makes entries in the records of individual practitioners and of legal practices. Mr Dean, the QLS Manager of Records and Member Services, gave evidence that, when the QLS processed Ms Warren's payment of fees on 7 July 2014, the CRM program automatically wrote that line item. The QLS was unaware of this unintended function of the CRM.
- [19] Before Ms Warren's application was lodged Mr Dean placed a 'special hold' status onto Ms Warren's profile in the CRM. The effect of this was that the practising certificate could not issue while the renewal application was being considered.
- [20] Ms Warren was advised on 8 September 2014 that her application for renewal of her practising certificate was being considered and that, in light of alleged breaches of professional duties, it was to be referred to the QLS Executive Committee for consideration. The letter also invited submissions from Ms Warren. In a letter dated 19 October 2014, Ms Warren did not respond to the substance of the letter but instead stated that:
- “The Society has published notification that I am the holder of an Unrestricted Principal's Practising Certificate for 2014-2015. This information is current and, by operation of the Society's publication and relevant legislative provisions, the Practising Certificate has already been renewed.
- As such, there is no basis to Mr Dean's advice that he proposes to refer the application to the Executive Committee of the Council for its consideration as to whether the local practising certificate '*should be renewed*,' referenced to future tense, as it has already been done”.
- [21] Ms Warren has maintained this position throughout the hearing of the appeal. It is based upon the entry in her membership details which only she could access

through the member’s portal. She did not identify which “relevant legislative provisions” she relied upon.

- [22] Section 51 of the Act deals with the grant or renewal of local practising certificates. It provides:

“51 Grant or renewal of local practising certificate

- (1) A regulatory authority must consider an application that has been made to it for the grant or renewal of a local practising certificate and may—
- (a) grant or refuse to grant the certificate; or
 - (b) renew or refuse to renew the certificate.

...

- (5) The regulatory authority must not renew a local practising certificate if it is satisfied that the applicant—
- (a) was not eligible to apply for the renewal of the certificate when the application was made; or
 - (b) is not a fit and proper person to continue to hold the certificate.

Note—

See section 46 (Suitability to hold local practising certificate).

- (6) Also, the regulatory authority must not grant or renew a local practising certificate if the authority considers the applicant’s circumstances have changed since the application was made and the applicant would, having regard to information that has come to the authority’s attention, not have been eligible to make the application when the application is being considered.

...

- (8) The regulatory authority must give the applicant an information notice if the authority—
- (a) refuses to grant or renew a local practising certificate; or
 - (b) imposes a condition on the certificate and the applicant does not agree to the condition.”

- [23] The QLS must, under s 51(1), “consider” an application for renewal. The automatic, and unintended, entry on a member’s file that a practising certificate has issued does not constitute consideration as required under the Act,

- [24] It is relevant to note, in passing, that, unlike in previous years, Ms Warren did not receive a hard copy or pdf copy of a 2014-2015 practising certificate.

- [25] Ms Warren’s application to renew her 2013-2014 practising certificate was not determined until 6 November 2015. She did not hold a valid practising certificate for 2014-2015 before that date, despite what appeared on her online record.

Professional Indemnity Insurance

- [26] It is uncontroversial that Ms Warren purchased and held Professional Indemnity Insurance from Lexon Insurance Pty Ltd for the 2014-2015 financial year. This is not determinative of her practising certificate being renewed. Under s 47(3) of the Act, the previous financial year’s practising certificate, in this case 2013-2014, continues in effect until such a time as the QLS determines the application to renew the practising certificate. It is a further requirement that a legal practitioner hold professional indemnity insurance while practising.² The fact that Ms Warren had complied with that requirement is irrelevant to the question of whether her 2013-2014 practicing certificate had been renewed before 6 November 2014.

Were the QLS Executive Council’s decisions beyond power?

Delegation

- [27] Ms Warren submits that the Information Notice of 7 November 2014 and the Amended Information Notice of 2 December 2014 which set out the QLS Executive Committee’s decision to refuse to renew her 2013-2014 practising certificate were not valid. She cross-examined a variety of witnesses about the powers they held to conduct their various duties.
- [28] The QLS delegated its relevant powers under the Act to the QLS Executive Committee on 9 February 2009. Section 683 of the Act permits such a delegation. There is nothing to support the proposition advanced by Ms Warren that the decisions of the QLS Executive Committee were not properly made because they were beyond power. These decisions were appropriately documented in minutes. Pursuant to s 712 of the Act, the minutes are evidence of the decisions recorded in them. It is the decisions of the QLS Executive Committee which are the relevant decisions for the appeal and application. They were made within the properly delegated power.

Decision to appoint the Receivers

- [29] Having already found that Ms Warren did not hold a practising certificate before 6 November 2014, and that the decision of 6 November 2014 to refuse to renew her practising certificate was validly made, the only question that remains to be dealt with is whether the QLS Executive Committee complied with the statutory provisions granting them power to appoint the Receivers.
- [30] Section 498 of the Act governs decisions about external intervention:

“498 Decision regarding external intervention

- (1) This section applies if the law society becomes aware that 1 or more of the circumstances mentioned in section 497 exist in relation to a law practice and decides that, having regard to the interests of the

² *Queensland Law Society Indemnity Rule 2005, Rule 9.*

clients of the practice and to other matters that it considers appropriate, external intervention is warranted.

(2) The law society **must** –

...

(c) appoint a receiver for the law practice, if the law society considers –

(i) that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or

(ii) that it may be appropriate that the provision of legal services by the practice be wound up and terminated.

...” (emphasis added)

[31] The relevant circumstance is set out in s 497 of the Act:

“497 Circumstance warranting external intervention

External intervention in relation to a law practice may take place in any of the following circumstances:

(a) if a legal practitioner associate involved in the practice has died, **ceases to be an Australian legal practitioner**, has become an insolvent under administration or is in prison

...”

[32] An “Australian legal practitioner” is defined in s 6 of the Act as “an Australian lawyer who currently holds a current local practising certificate or a current interstate practising certificate”. The decision not to renew Ms Warren’s practising certificate came into effect on 17 December 2014. At that point Ms Warren ceased to be an Australian legal practitioner.

[33] The matters the QLS Executive Committee had regard to in determining whether external intervention was warranted “having regard to the interests of the clients of the practice and to other matters that it considers appropriate” include the following:

1. Ms Warren had failed to address the issue of the consequence of her inability to engage in legal practice raised in correspondence from the QLS;
2. The lack of knowledge of the QLS as to whether Ms Warren had engaged in legal practice after the decision not to renew her practising certificate came into effect;
3. The continued use of her legal practice’s stationary;
4. The potential detriment to clients by practising without a practising certificate;
5. The lack of information about the size of the practice or its workflow;

- [34] These matters were in addition to the matters before the QLS Executive Committee informing the decision not to renew Ms Warren's practising certificate. Having formed the view that the appointment is necessary to protect the interests of clients in relation to trust money or trust property on the basis of the above matters, the QLS was required to appoint the Receivers under s 498 of the Act.
- [35] The resolution of 24 December 2014 and the instrument appointing the Receivers on 7 January 2015 were validly made.
- [36] The grounds of appeal advanced by Ms Warren did not identify or assert errors of fact, of law or in the exercise of any discretion. The QLS's submissions of 21 August 2015 (para. 25) deal in detail with these grounds and demonstrate the absence of merit.

Application for the delivery up of the regulated property

- [37] Ms Warren must, under s 517 of the Act allow the Receivers to take possession of the Regulated Property if required to do so by the Receivers.

“517 Power of receiver to take possession of regulated property

- (1) The receiver for a law practice may take possession of regulated property of the law practice.
 - (2) A person in possession or having control of regulated property of the law practice must permit the receiver to take possession of the regulated property if required by the receiver to do so.
 - (3) If a person contravenes subsection (2), the Supreme Court may, on application by the receiver, order the person to deliver the regulated property to the receiver.
 - (4) If, on application made by the receiver, the Supreme Court is satisfied that an order made under subsection (3) has not been complied with, the court may order the seizure of any regulated property of the law practice that is located on the premises stated in the order and make any further orders it considers appropriate.
 - (5) An order under subsection (4) operates to authorise the receiver, or a person authorised by the receiver, to enter the premises stated in the order and search for, seize and remove anything that appears to be regulated property of the law practice.
 - (6) The receiver must return anything seized under this section if it transpires that it is not regulated property of the law practice.
 - (7) For an order under subsection (4), the manager is declared to be a public official for the *Police Powers and Responsibilities Act 2000*, chapter 1, part 3, division 2.”
- [38] On 9 January 2015, the Receivers wrote to Ms Warren. This correspondence included notice that the Receivers were to take possession of the Regulated Property. On several other occasions in early 2015 the Receivers communicated to

Ms Warren, in writing and in person, that the Receivers required Ms Warren to deliver the Regulated Property of Lexie Warren Solicitor. On 16 and 17 June 2015, the Receivers sent Ms Warren by facsimile and email a Notice of Requirement which included a request under s 517 of the Act.

- [39] Ms Warren denies having received any of these communications. I do not accept her denial. Her evidence on this point was vague and changed according to what appeared to her to be the most useful answer at a point in time. I accept the evidence of the Receivers about the various methods and means of communication used, and find that Ms Warren received the required notice. Ms Warren has not complied with the requirement of the Receivers to provide the Regulated Property.
- [40] The Receivers cannot effectively carry out their duties under the Act without the Regulated Property. I am satisfied that Ms Warren has contravened s 517(2) and that it is appropriate to exercise the discretion under s 517(3).

Other matters

- [41] In her written submissions and her submissions in reply, Ms Warren presents a panoply of fanciful, incoherent and irrelevant arguments. If they demonstrate anything it is that Ms Warren has failed to come to grips with the real issues in this matter. None of her arguments have any merit. They are dealt with in considerable detail in the Further Submissions of QLS and the Receivers (6 October 2015) and I accept those submissions as fully answering them.
- [42] Each party objected to large parts of the affidavit evidence filed by the other and relied upon in the hearing. Ms Warren's objections did not comply with the directions which had been made and were, in any event, without merit in every case. There was merit in most of the QLS objections but, given the decisions I have reached, they need not be pursued.
- [43] The QLS and the Receivers seek indemnity costs for the appeal and for the Receiver's application. At the conclusion of the hearing of this matter the QLS raised the issue of the costs of an application made by Ms Warren on the first day of the hearing. That application had failed and I dismissed it and reserved the costs. The discussion then had with Ms Warren and with Mr Reidy was to the effect that written submissions should include submissions as to costs. It was made clear that everything was to be covered by the written submissions for which directions were made and that there would be no further appearances. Ms Warren has made no submissions on costs.
- [44] In their application for indemnity costs the QLS and the Receivers recognise that some special or unusual feature must be present to warrant a departure from the ordinary rule that costs are to be ordered on the standard basis. Mr Reidy submitted that this was an appropriate case for an order that Ms Warren pay indemnity costs in both matters. He pointed to a number of matters including, for example, that Ms Warren had made a "no case to answer" submission in her own appeal. Other, relevant matters included the repeated failures by Ms Warren to comply in a timely way with directions made by Flanagan J and by me in this matter. The conduct of this matter was made more difficult because she did not comply with directions (given by consent) to define the issues for trial and to provide a written submission before the trial. During the hearing Ms Warren, notwithstanding clear direction by

me to desist, insisted on cross examining upon irrelevant matters. The material which she filed was lengthy and, for the most part, irrelevant. She alleged misconduct against witnesses but did not give them the opportunity to answer these allegations in cross-examination. She also made allegations of misconduct against people who were not witnesses and whose involvement was, at best, peripheral. As I have already noted, much of Ms Warren's argument was irrelevant and without any merit. Nevertheless, it required the QLS and the Receivers to investigate and respond to these assertions.

- [45] This is a case in which it appears appropriate to make an order for indemnity costs including reserved costs. Nevertheless, I will hear Ms Warren on this point.

Conclusion

- [46] Ms Warren's appeal is dismissed.
- [47] The Receiver's application is allowed. The QLS and the Receivers are to bring in minutes of order.