

# SUPREME COURT OF QUEENSLAND

CITATION: *CBX v QWJ* [2024] QSC 5

PARTIES: **CBX**  
(Applicant)

v

**QWJ**  
(Respondent)

FILE NO/S: BS 7060 of 2023

DIVISION: Trial Division

PROCEEDING: Originating Application and Cross-Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 January 2024

DELIVERED AT: Brisbane

HEARING DATE: 15 December 2023

JUDGE: Crowley J

ORDER: **1. I allow CBX’s application and will make orders for the appointment of statutory trustees for sale of the Robertson property in the terms sought by CBX.**

**2. I direct CBX to provide a draft of the necessary orders, consistent with these reasons.**

**3. I dismiss QWJ’s application.**

**4. QWJ is to pay CBX’s costs of each application on the standard basis.**

CATCHWORDS: FAMILY LAW AND CHILD WELFARE – THE FAMILY LAW ACT 1975 (CTH) AND RELATED LEGISLATION – JURISDICTION – DE FACTO RELATIONSHIPS – EXISTENCE OF RELATIONSHIP – where the parties are co-owners of a residential property – where the parties purchased the property when they were in a relationship – where the relationship has ended – where the applicant applies in the Supreme Court for the appointment of statutory trustees for sale of the property under s 38 of the *Property Law Act 1974* (Qld) – where the respondent applies to have the proceeding transferred to the Family Court so that she may pursue an application under the *Family Law Act 1975* (Cth) to adjust her interest in the property – where the respondent submits that the Family Court has exclusive jurisdiction in this matter on the basis the parties were in a de facto relationship for a total period of more than two years – whether the parties were in a

de facto relationship – whether the duration of the de facto relationship was more than two years

*Family Law Act 1975* (Cth), s 4AA, s 90RC, s 90SB, s 90SM  
*Jurisdiction of Courts (Cross-vesting) Act 1987* (Qld), s 5  
*Property Law Act 1974* (Qld), s 38

*Jones v Dunkel* (1959) 101 CLR 298; [1959] HCA 8, cited

COUNSEL: M Downes for the Applicant  
C Zampatti (*sol*) for the Respondent

SOLICITORS: Wheldon & Associates for the Applicant  
Zampatti Lawyers for the Respondent

- [1] CBX and QWJ are co-owners of a residential property in Robertson. They each have a half interest in the property as tenants in common. They bought the property in 2021, when they were living together in a domestic relationship. That relationship has since ended.
- [2] CBX now wishes for the property to be sold and, after the necessary costs and expenses of the sale are paid, for the net sale proceeds to be paid to him, or otherwise to be paid to the parties in proportions determined by the Court. To that end, he has applied for the appointment of statutory trustees for sale under s 38 of the *Property Law Act 1974* (Qld) ('PLA').
- [3] QWJ does not necessarily oppose the sale of the property. However, she contends the resolution of their relationship is not so straightforward. She says that their most recent period of co-habitation was actually part of a much longer domestic relationship. She says that she and CBX have in fact been in an on-again off-again de facto relationship for many years and the Robertson property was purchased as property of that relationship. She claims her interest in the property should be recognised as more than a half because she has greater financial need than CBX and because she has made greater financial and other contributions to the acquisition and maintenance of the property. She says these matters should be taken into account to alter the interests of the parties in the Robertson property.
- [4] This Court cannot make an order under the PLA to vary the parties' respective interests in the property on the basis contended for by QWJ. However, the Family Court may, in a de facto property settlement proceeding under the *Family Law Act 1975* (Cth) ('FLA').
- [5] There is no such proceeding on foot in the Family Court at present. Nevertheless, QWJ says the Family Court has exclusive jurisdiction to declare and determine the respective property interests of the parties upon the breakdown of their de facto relationship. Accordingly, she applies for the present proceeding to be transferred to the Brisbane Registry of the Federal Circuit and Family Court of Australia (Division 1), under s 5 of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Qld), so that she may pursue an application in that Court to adjust her interest in the property. Alternatively, QWJ seeks a stay of the present proceeding.
- [6] CBX opposes the matter being transferred to the Family Court. He disputes the suggestion that he and QWJ were in a de facto relationship of a duration that would give the Family Court jurisdiction. He presses for the appointment of the statutory trustees for sale and says there is no reason for the proceeding to be stayed.

### **The *FLA* and the issues to be decided**

- [7] There is no dispute that under the ‘de facto financial provisions’ of Part VIIIAB of the *FLA*, the Family Court has the power to make orders in respect of financial matters relating to de facto relationships.
- [8] One such provision is s 90SM, pursuant to which the Family Court may make a property settlement order to alter the interests of the parties with respect to property after the breakdown of a de facto relationship.
- [9] If such an order were made in respect of the parties in this matter, the Family Court could, if necessary, also then deal with the s 38 *PLA* application and make any required orders, including orders that would distribute the proceeds of the sale of the property in accordance with any altered property interests determined by the Court.
- [10] Section 90RC(2) of the *FLA* confirms that, amongst other things, the de facto financial provisions of Part VIIIAB are to apply to the exclusion of any law of a State or Territory to the extent that those provisions deal with financial matters relating to the parties to de facto relationships arising out of the breakdown of those de facto relationships.
- [11] However, s 90SB(a) relevantly provides that an order altering property interests may only be made by the Family Court under s 90SM if the period, or the total of the periods, of the de facto relationship is at least 2 years.
- [12] Section 4AA(1) of the *FLA* provides that a person is in a ‘de facto relationship’ with another person if:
- (a) the persons are not legally married to each other; and
  - (b) the persons are not related by family; and
  - (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.
- [13] Neither of the circumstances in ss 4AA(1)(a) or (b) apply in this case. What is in issue is whether the nature of the relationship between the parties was of the kind described in s 4AA(1)(c).
- [14] Section 4AA(2) sets out a non-exhaustive list of circumstances which may be taken into account to work out if persons have a relationship as a couple living together on a genuine domestic basis. Section 4AA(3) provides that no particular finding in relation to any circumstance listed in s 4AA(2) is to be regarded as necessary in deciding whether the persons have a de facto relationship. Further, s 4AA(4) provides that a court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- [15] The parties are agreed that the effect of these various provisions of the *FLA* is that the Family Court would have exclusive jurisdiction to deal with this matter, as part of a de facto property settlement proceeding, if the parties were in a de facto relationship of more than two years’ duration in total.
- [16] Although no proceedings have been commenced in the Family Court, CBX accepts that if I were to find that the parties were in a de facto relationship of more than two years’ duration, then the proceeding ought to be transferred to the Family Court. Conversely, QWJ accepts that if I do not find that the relationship was a de facto relationship of two years’ duration, there is no other reason to resist CBX’s

application for appointment of statutory trustees for sale. Similarly, there would be no other basis for a stay of the current proceeding.

- [17] The two central issues that I must decide to resolve these applications are therefore:
- (a) Were the parties in a de facto relationship?
  - (b) Was the duration of the de facto relationship more than two years?
- [18] QWJ accepts that she bears the onus of proving each of these matters, in order to establish that the Family Court would have jurisdiction to deal with this case in the course of a de facto property settlement proceeding.
- [19] If the answer to each of those questions is ‘yes’, then it follows that I would grant QWJ’s application and order that the proceeding be transferred to the Family Court. If the answer is ‘no’, then it follows that I would dismiss QWJ’s application and make the orders sought by CBX for appointment of statutory trustees for sale.

**Were the parties in a de facto relationship?**

- [20] The parties first met in 2014, when CBX purchased a property from QWJ. At the time, QWJ was married.
- [21] In about late 2014, sometime after CBX purchased the property, the pair began exchanging text messages of a personal nature. CBX eventually invited QWJ out to dinner. Not long after, they commenced an intimate relationship.
- [22] Between 2015 and 2021, the parties pursued their intimate relationship, albeit not on a continuous basis. As I will further detail below, there was a substantial period between 2017 and 2021 when the pair were not together because CBX had obtained a domestic violence order (‘DVO’), naming QWJ as the respondent. Amongst other things under the terms of that order, QWJ was prohibited from approaching or contacting CBX.
- [23] The parties have very different views about the nature of their relationship between 2015 and 2021. CBX says that they were not ‘boyfriend and girlfriend’ and that between 2015 and 2017 their relationship was primarily a sexual one. He says they were not living together as a couple in a genuine domestic relationship and they had no contact whatsoever between 2017 and 2021 as a result of the DVO. In contrast, QWJ says that they were effectively ‘husband and wife’ for the entire period and they were living together as a couple in a genuine domestic relationship.
- [24] Regardless of the position between 2015 and 2021, there is no dispute that in early 2021 the parties ‘rekindled’ their relationship.
- [25] It was in those circumstances that the parties purchased the Robertson property. It appears that the contract to purchase the property was entered into in February 2021 and settlement took place in April 2021. From that time, until about September that year, the parties lived together at the Robertson property.
- [26] Irrespective of the nature of their previous relationship, CBX accepts that when the parties lived together in 2021, they were in a de facto relationship.
- [27] I am satisfied that was the nature of their relationship at that time and that the parties had then been in a de facto relationship for about seven months between February and September 2021.
- [28] The real issue in dispute therefore is whether the parties had earlier been in a de facto relationship and, if so, whether the combined total period of their earlier relationship

was such that the total period of their de facto relationship over time was at least two years in duration.

**Was the duration of the de facto relationship more than two years?**

- [29] Each of the parties swore affidavits in which they described the nature and extent of their relationship. Each was cross-examined.

***QWJ's evidence***

[30] QWJ's evidence was that she and CBX began cohabitating in May 2015, first at an address in Sunnybank and then later at her unit at the Mantra complex in Southbank. She recalled they lived for a short time at the Riverside Apartments, before moving to live together at a commercial property CBX owned at Coopers Plains. She said they lived together at the Coopers Plains property until they purchased the Robertson property.

[31] QWJ said that during their relationship, CBX would go to his office at the Coopers Plains property to work and she would do all the housework, cleaning, laundry, ironing and preparation of meals, as well as going to work herself.

[32] According to QWJ, when she and CBX purchased the Robertson property in February 2021, CBX bought her a designer ring and proposed to her.

[33] QWJ said in June 2022, CBX went to the United States of America for a month. She said that CBX asked her to go with him, but she was unable to do so. According to QWJ, whilst CBX was away they spoke every day on the telephone.

[34] QWJ said that when CBX returned to Australia in about July 2022, he did not return to live with QWJ at the Robertson property. QWJ stated that she was not aware that he was not coming back to their house and that his clothes and other things are still there.

[35] In support of her contention that she and CBX had been in a genuine domestic relationship for at least two years, QWJ produced several photographs that she said she had posted on her Facebook account of her and CBX spending time together, as well as a copy of a 'reference' letter that CBX had written for her in June 2021.

[36] The reference letter was addressed 'To Whom It May Concern' and relevantly stated:

[QWJ] and myself have known each other since 2014 and had a relationship up to 2017. We lost contact for a short while however reunited in January this year and have been living together since.

Our interests and passions are aligned and recently we bought a house together where we have set up home. Into the future we may consider marriage and starting a family. Both of us have children from previous relationships and are family orientated...

...

In my opinion [QWJ] is an exceptional woman of upstanding character. She is also a role model for her family and me.

[37] When cross-examined, QWJ denied that the relationship with CBX was nothing more than a sexual one. She maintained that they travelled together, worked together and did things together and that 'everything was just like husband and wife'.

[38] QWJ agreed that she had remained married to her husband after commencing the relationship with CBX in 2015. However, she stated that she had moved out of the

family home and was living with CBX but would return to her family home on occasions to visit her children.

- [39] QWJ accepted that there were times when CBX travelled away for work and she did not accompany him. However, she stated this was because she had work commitments. She denied suggestions that at the end of 2016 CBX went to the Philippines for Christmas without her and that in 2017 he went on a holiday to Singapore without her. Her evidence was that CBX did not go on either of these trips at all.
- [40] When asked about the DVO, QWJ stated that she was not aware that the order had been made against her in May 2017. She denied that she and CBX had ceased all contact from the time the DVO was issued through until 2021. Her evidence was that CBX was still seeing her and ringing her all the way through that period.
- [41] In re-examination, QWJ stated that CBX had been admitted to hospital on two occasions in respect of lung cancer, the first time being in 2016 and the second in 2019, and that on each occasion she had been at the hospital with CBX to care for him and support him. She further stated that her own children had come to visit CBX with her but that CBX's own adult children had 'never', 'not once' visited or supported him while he was in hospital.
- [42] In further re-examination, QWJ explained that on the occasion when she said CBX proposed to her, they had been at the jeweller at Sunnybank Plaza and they had then gone to the Robertson property.

#### ***CBX's evidence***

- [43] CBX's evidence was that he and QWJ did not cohabit at all between 2015 and 2021. He stated that they did not reside at the same residence during that period but that QWJ would occasionally stay over at his Coopers Plains property.
- [44] He stated that he and QWJ had a sexual relationship which started in March 2015 and continued through until May 2017, before 'reigniting' in February 2021 and ending on 2 September 2021. His evidence was that other than for the purposes of the Robertson property, he and QWJ did not have joint bank accounts, they did not spend any real time with each other's children and they did not go out in public together as a couple.
- [45] CBX said his relationship with QWJ was volatile because her husband did not want them to spend time together. He stated that QWJ's behaviour was also unpredictable and at times she would become violent. As a result, he applied for a DVO in March 2017. CBX stated that the matter was heard in May 2017 and the court granted his application and made the DVO, initially for a period of two years. His recollection was that QWJ and her husband were both present in court at the hearing.
- [46] CBX also recalled going on overseas holidays alone at various times, including to the Philippines in late 2016 to early 2017 and to Singapore in April 2017. CBX produced documentary evidence of his itineraries for those trips.
- [47] CBX accepted that in February 2021 he and QWJ had re-established a sexual relationship. However, he stated that he had left the Robertson property in about September 2021 and since that time he has lived at his Coopers Plains property and has not lived with QWJ.
- [48] He confirmed that he had bought QWJ a ring, however he said it was not an engagement ring. He noted that QWJ was still married to her husband at the time.

- [49] CBX confirmed that since ceasing to live at the Robertson property he has informed QWJ that he wishes to liquidate the Robertson property and has, through his solicitors, sought her agreement to jointly sell it. He stated that QWJ has not responded to his request.
- [50] In cross-examination, CBX accepted that he would regularly stay at QWJ's Mantra apartment. However, he denied staying at the Riverside Apartments and said that he was unaware of any such address.
- [51] He further denied that he had been with QWJ from 2014 through until 2021. He maintained there was a four-year period between May 2017 and January 2021 when the DVO was in place where he did not see her. He denied that they had been living together in a de facto relationship from 2014 to 2017.
- [52] He agreed that there were occasions when QWJ had accompanied him on work trips. He also agreed that when he went on holidays, he would maintain contact with QWJ, texting her sometimes to update her about what he was doing and occasionally sending her photographs. He agreed that he had travelled to America in 2022 and whilst there he had contacted QWJ. However, he said that he had had a heart attack whilst on that trip and that he had 'reached out' to lots of people as he was feeling isolated.
- [53] CBX denied the suggestion put to him that one of the photographs produced by QWJ was of him having dinner at QWJ's Mantra unit, as she had stated in her affidavit evidence. His evidence was that it was taken more recently and that it was actually at the Robertson property, as he recognised the background.
- [54] He agreed that he had a couple of hospitalisations in the past and that QWJ had visited him on those occasions. However, he denied that he was reliant on QWJ during these times. He further denied that QWJ's children had ever visited. His evidence was that his own children had visited him.
- [55] He accepted that in 2021 he had bought the Robertson property with QWJ. He also accepted that he had bought her a ring but denied that he had proposed to her.
- [56] CBX also accepted that he had written the reference letter for QWJ that she exhibited to her affidavit. When asked whether what he wrote in the letter was true, CBX stated there was 'context to this letter'. He then explained that he had written it at QWJ's request, prior to her being sentenced in respect of another DVO matter and stated that it had been 'embellished' or 'exaggerated' so as to 'paint her in the right light'.

### ***Consideration***

- [57] Whilst many factual disputes were raised by the evidence of the parties, I do not consider it is necessary to resolve each and every contested point. That is because the only issue that I ultimately need to determine is whether, on the balance of probabilities, QWJ has proven her case that she and CBX were in a de facto relationship of at least two years' duration.
- [58] Bearing those matters in mind, it is nevertheless pertinent to note that there are two aspects of the evidence given by CBX that I find troubling.
- [59] The first is his evidence that after an apparent break in the relationship with QWJ of nearly four years, they 'rekindled' their relationship and he agreed to buy a house with her and then shortly thereafter commenced living with her in what he accepts was a de facto relationship. Just how and why this all transpired is not fully or adequately explained by CBX's evidence.

- [60] The second is his evidence about the reference letter he wrote for QWJ. In the letter, he describes QWJ in glowing terms, consistent with the pair being in a long-term de facto relationship. The contents of the letter are inconsistent with CBX's denials of such a relationship, as alleged by QWJ. Whilst in cross-examination CBX sought to explain the context in which he had written the letter, he did not identify any parts that were untrue. Further, although he stated that he had exaggerated when writing the letter, he did not identify what parts were exaggerated or in what way he had exaggerated.
- [61] Despite these shortcomings in CBX's evidence, there were many more troubling aspects of the evidence given by QWJ and it is she that bears the onus of proof on the ultimate issue I must determine.
- [62] I do not consider QWJ's evidence to be persuasive at all. In my view, she gave a largely skewed and contrived account of the relationship she had with CBX. In several material respects, I found her evidence was neither reliable nor credible. It suffices to note the following instances.
- [63] First, I consider it implausible that CBX and QWJ were living together in a genuine domestic relationship during the almost four-year period between when the DVO was made in 2017 and when the pair reconnected and rekindled their relationship in early 2021. It seems inherently improbable that CBX would have gone to the trouble of applying for and obtaining the DVO, for the reasons he outlined in his affidavit evidence, only to then continue the relationship with QWJ. In this respect, I note that his affidavit evidence about the past volatile nature of his relationship with QWJ and the reasons for seeking the DVO were largely unchallenged and uncontradicted by QWJ.
- [64] Further, I do not accept QWJ's evidence that she was not aware that the DVO had been made. The copy of the DVO in evidence clearly states that QWJ was present in court when the order was made. Her evidence to the contrary was no more than an expedient and unconvincing attempt to fill an obvious and significant hole in her case.
- [65] Second, despite conceding in cross-examination that she was a regular user of Facebook and that she would frequently post photographs of special occasions on social media, I am satisfied that only one of the photographs produced by QWJ was clearly of an occasion before 2021. That was a single photograph of QWJ from 2016, taken on an occasion when she had accompanied CBX on a work trip. I accept CBX's evidence that the photograph shown to him, which QWJ had stated was of him having dinner at her Mantra apartment, was taken in 2021 at the Robertson property. The absence of photographic evidence of their relationship between 2014 and 2021 does not support QWJ's evidence.
- [66] Third, despite not mentioning it in her affidavit evidence, QWJ claimed in cross-examination that she and CBX had previously had a joint bank account in 2016. When she was asked about whether she had bank statements for this account, she said that she did, but they were at home and she did not have them with her in court. I do not accept this evidence. In my view, this was a feeble and contrived attempt by QWJ to explain the absence of proof of the asserted facts. Before coming to court, QWJ was obviously aware that CBX had stated in his affidavit evidence that the pair did not previously have a joint bank account and did not share finances. If there had been such an account, then it was incumbent upon QWJ to adduce the necessary evidence of it. A simple way of doing so would have been for QWJ to produce copies of the relevant bank statements for the account. In my assessment, her evidence about a previous joint bank account was wholly contrived.



- [67] Fourth, and in a similar vein, QWJ claimed in cross-examination that she had the invoice from the jewellers at Sunnybank Plaza, and a witness who was present at the time, to prove that CBX bought her what she claimed was a diamond engagement ring. Yet, despite being aware that CBX had given affidavit evidence refuting any suggestion that he had proposed to QWJ, she produced neither the witness nor the invoice to support her case. I do not accept her evidence in this regard. If she in fact had such proof, then I would have expected her to produce it to the Court. I consider her evidence on these matters was another self-serving attempt to bolster her case without actual proof.
- [68] Fifth, and in another similar example, QWJ claimed in cross-examination that in respect of the contact she had with CBX during times he had travelled away without her that she had ‘all the evidence, all the phone calls, everything’. Yet again, she produced no telephone records or other evidence of such contact during those times.
- [69] Sixth, QWJ claimed that her now adult children were aware that she had been living with CBX most of the time after she had separated from her husband. Yet, despite confirming that she had a close relationship with them and that they could give evidence about the matters she spoke of, QWJ did not call any of her children to give evidence about what they knew of her relationship with CBX. In the circumstances, I infer that any evidence the children may have been able to give would not have assisted QWJ’s case.<sup>1</sup>
- [70] Seventh, although QWJ claimed that she had never seen CBX’s children visit him at the hospital, CBX’s daughter swore an affidavit in which she stated that in early 2017 she had been at the hospital and had seen QWJ there briefly for about ten minutes. CBX’s daughter was present in court for the hearing of these applications but was not required for cross-examination. Her evidence on this issue, which was inconsistent with QWJ’s evidence, was not challenged.
- [71] Eighth, QWJ’s evidence that on the occasion CBX had bought her the ring and proposed to her they had thereafter gone to the Robertson property is inconsistent with the undisputed evidence that settlement of the Robertson property purchase took place on 19 April 2021. QWJ’s evidence was that the ‘proposal’ happened in February 2021. If her recollection of the timing of that occasion is correct, the pair could not have then gone to the Robertson property as settlement had not yet occurred.
- [72] I further note that in her affidavit evidence QWJ pointed to a Facebook photograph of CBX and herself, wearing the ring, as evidence of the proposal occurring in February 2021. However, on closer inspection, it was apparent that the Facebook photograph had a partially cut-off date stamp on it, which appeared to read ‘April 2021’. When I raised that matter during submissions, QWJ’s solicitor conceded that the date on the photograph was ‘April 2021’ but submitted that QWJ had been ‘mistaken’ when she referred to the proposal happening in February 2021. I do not accept that submission. QWJ did not give evidence that she was mistaken as to the date. In my view, the photograph produced by QWJ does not support her evidence that CBX proposed to her, or that it occurred in February 2021, as she swore in her affidavit evidence.
- [73] Finally, QWJ’s flat denials in cross-examination that CBX had travelled overseas to the Philippines and Singapore in 2016 and 2017 were plainly contradicted by the documentary evidence of those trips produced by CBX. Had they actually been

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<sup>1</sup> *Jones v Dunkel* (1959) 101 CLR 298.

together in a de facto relationship during this time, I would have expected she would have been aware that CBX went on those trips.

- [74] In all the circumstances, I do not accept QWJ's evidence about the nature and extent of the relationship she had with CBX between 2014 and 2021, prior to the pair purchasing the Robertson property.

### **Conclusion**

- [75] Apart from the period when they cohabitated in 2021, I am not satisfied that CBX and QWJ were otherwise living together as a couple in a genuine domestic relationship at any time.
- [76] Accordingly, I am not satisfied that QWJ has proven that she and CBX were in a de facto relationship for a period of at least two years.
- [77] That being so, I am not satisfied that this is a matter where the Family Court would have jurisdiction to deal with a de facto property settlement and no proper basis for the transfer of the proceeding to that court has been demonstrated.
- [78] I am, however, satisfied that it is appropriate to make the orders sought by CBX for the appointment of statutory trustees for sale. In so concluding however, I am not satisfied CBX has demonstrated any basis for an order that he be paid the net proceeds of the sale of the property. In those circumstance, the appropriate order to make in that respect will be that half of the net sale proceeds are to be paid to each of the parties, according to their respective one-half interests in the property.

### **Orders**

- [79] I allow CBX's application and will make orders for the appointment of statutory trustees for sale of the Robertson property as sought by CBX.
- [80] I direct CBX to provide a draft of the necessary orders, consistent with these reasons.
- [81] I dismiss QWJ's application.
- [82] QWJ is to pay CBX's costs of each application on the standard basis.