

**CITATION:** Goodellis v Queensland Building Services Authority (No 2)  
[2010] QCAT 481

**PARTIES:** ANTHONY MICHAEL GOODELLIS

V

QUEENSLAND BUILDING SERVICES AUTHORITY

**APPLICATION NUMBER:** QR181-09

**MATTER TYPE:** General administrative review matters

**HEARING DATE:** 8 April 2010

**HEARD AT:** Brisbane

**DECISION OF:** Mr Paul Favell

**DELIVERED ON:** 28 September 2010

**DELIVERED AT:** Brisbane

**ORDERS MADE:** The Tribunal orders that the decision of the Queensland Building Services Authority to refuse the application to be categorised as a Permitted Individual be confirmed

**CATCHWORDS:** Application to be categorised as a permitted individual-refusal- review-S56AD(1) Queensland Building Services Authority Act 1991

**APPEARANCES AND REPRESENTATION:** Applicant: Mr Goodellis  
Respondent: Mr Robinson; Solicitor: Forbes Dowling Lawyers

## REASONS FOR DECISION

### Introduction

1. On 7 July 2009 a decision was made by the Building Services Authority to refuse an application by the applicant to be categorised as a Permitted Individual pursuant to s56AD(1) of the *Queensland Building Services Authority Act 1991* ("the Act").

### Factual Background and Claims

2. Glentone Australia Pty Ltd carried on the business of shop and office fitting.
3. The relevant event occurred on 13 May 2009, it being the liquidation of Glentone Australia Pty Ltd ("GAPL") as a result of a resolution of its members. On that date, Christopher Cook and Morgan Lane were appointed as liquidators of Glentone Australia Pty Ltd.
4. At that time and during the preceding year, the applicant was the director of GAPL.
5. A historical company search from ASIC obtained by the respondent (exhibit 2) shows that:
  - (a) The current directors, who were appointed on 29 March 2002, are the Applicant and Martin Cole;
  - (b) The shareholders are:
    - Anthony & Joanne Goodellis – 1,000 A class shares
    - Martin & Linda Cole – 1,000 B class shares
    - Martin Stewart Cole – 1 ordinary share
    - The Applicant – 1 ordinary class share
6. On 22 May 2009 the Building Services Authority sent the applicant a 'Notice of Reasons for Proposed Cancellation of Licence' (exhibit 3 to the application).
7. The applicant applied to be categorised as a permitted individual citing 'Economic conditions affecting industry' as the main cause of the relevant event.
8. On 7 July 2009 the Building Services Authority informed the applicant by letter that his application to be categorised as a permitted individual had failed. The BSA said that they were not satisfied that the applicant took all reasonable steps to avoid the circumstances that resulted in the relevant event.
9. A statement of reasons dated 31 August 2009 was provided (exhibit 4).
10. The applicant applied to the tribunal on 4 August 2009.

### Applicant's claim

11. The applicant claimed that the company appointed Chris Nobbs and Mike Norton from ABC Business Coaching in 2006 to implement strategies and procedures. Their involvement was increased in 2007 to complete administrative control working together with managing director, Martin Cole. The applicant's role was more hands on in production and site installation.

#### For more information on QCAT

12. The applicant contended that in or around June 2007 he expressed a desire to relinquish his directorship of and ownership of shares in the company. Martin Cole and Chris Nobbs sourced two alternative directors, being Robert Carnegie and Shane Plumb. An agreement was drawn up for Robert Carnegie and Shane Plumb to buy the applicant's shares in the company. Robert Carnegie and Shane Plumb were given directors rights and were heavily involved in decision making.
13. There are several decisions that the applicant claimed he disapproved of, but was overruled on by Martin Cole, Chris Nobbs, Robert Carnegie and Shane Plumb, including:
  - (a) the amount of salaries paid to potential directors;
  - (b) the type of vehicles bought;
  - (c) which bookkeeper to employ; and
  - (d) which premises to lease.
14. The applicant claimed that these decisions put strain on the cash flow. Although he did disagree with the decisions, he did not want to stand in the way of Martin Cole and the future directors' decisions.
15. The exchange of shares between the applicant and Robert Carnegie and Shane Plumb was to take place on 31 December 2007 however this did not happen.
16. Whytes Accountants furnished financial figures for the period ending 31 December 2007 showing a profit for the period of \$326,000 which was backed up by a 'Business Performance Update' from ABC Business Consultants showing a profit for the period of \$387,000. Financial figures were furnished again around or in March 2008 which showed a loss of \$190,000 for the same period. At the end of the financial year, the company made \$80,000 profit.
17. The applicant claimed he then relieved ABC Business Coaching of their duties and all involvement with the company.
18. ABC Business Coaching and Martin Cole were responsible for the employment of financial controller Natasha Houlahan. The applicant claimed that Ms Houlahan had no concept of accounting practices and was employed based on a mobile phone call with no evidence of qualifications. The applicant claimed that Ms Houlahan rarely did a bank reconciliation and after she was dismissed in June 2008 he was forced to handle the accounts. During that time he found that Ms Houlahan had not been recording incoming accounts receivables and after accounting for these mistakes, accounts receivable was reduced by \$700,000.
19. The applicant claimed he then approached Whytes Accountants with the fear that the company was trading insolvent however Whytes Accountants assured him it was not.
20. Once he realised the financial position of the company the applicant claimed that he engaged Carters Business Consultancy to conduct an unofficial audit which found that:
  - (a) bank reconciliations were not carried out for over three months;
  - (b) the taxation debt was understated by \$200,000;
  - (c) three months invoices for suppliers had not been processed;
  - (d) paid accounts were not recorded in the accounting system;
  - (e) time sheets had been falsified; and
  - (f) materials had been ordered and never delivered to the company.

21. The intended future directors, Robert Carnegie and Shane Plumb, pulled out of the agreement to purchase the applicant's share of the company. The applicant claimed that they left the company in a far worse situation.
22. The applicant claimed he then restructured the company including:
  - (a) dismissing the two intended future directors due to poor performance;
  - (b) dismissing current project managers;
  - (c) improving quotation procedures;
  - (d) employing professional project managers;
  - (e) employing a professional estimator;
  - (f) setting in place procedures for the efficient execution of works;
  - (g) Modifying timesheets which required certification by the factory manager;
  - (h) dismissing employees who falsified records;
  - (i) upgrading the ordering system which required approval on purchases made by one person; and
  - (j) refinancing the company which included entering into arrangements with creditors and the ATO to pay back debt over several years.
23. The applicant claimed that these steps reduced the company's overall debt.
24. The applicant contended that the global economic downturn affected sales however suggested that the company looked like it would still survive because there was sufficient income, the company had been refinanced, and the number of staff had been reduced.
25. The applicant claimed that sales became almost non-existent in or around March and April 2009.
26. Salsa Fresh Foods, the company's largest client, then withdrew from a contract worth over \$500,000. The applicant believed they found a cheaper contractor. At that time Salsa Fresh Foods were in arrears to the sum of \$130,000. Wages and employee entitlements were not paid out at that time.
27. Whytes Accountants recommended trading for a further week to see if any new sales were generated. There were no further sales within that week and an appointment was made immediately with the liquidators to put the company into voluntary liquidation.

## **Respondent's response**

28. The respondent submitted that the issue under consideration in this matter was whether or not all reasonable steps were taken to avoid the existence of circumstances that resulted in the happening of the relevant event.
29. The respondent considered the circumstances that caused the Relevant Event to be:
  - (a) the acting by GAPL upon decisions made by management (identified as Martin Cole, Chris Nobbs, Robert Carnegie and Shane Plumb and the applicant) which detrimentally affected the viability of the company;
  - (b) the loss of the significant customer.
30. As to the applicant's claim that the loss of a significant customer was one of the circumstances that resulted in the happening of the relevant event, the respondent said that the loss of the single customer had not been demonstrated. The respondent relied on the trading account for 2007 which indicated sales of

- \$2,898,139. The respondent claimed that the loss of a client whose work was said to be “over \$500K” was significant, but the applicant had not demonstrated that this caused financial catastrophe.
31. The respondent also contended that the other circumstances that resulted in the happening of the relevant event, such as incompetence of staff, false pay records, and economic downturn do not appear to be dominant factors causing the failure of GAPL and the need to wind up the company. The respondent submitted that these items appear to be comparatively small and did not cause insolvency.
  32. The respondent submitted that a significant factor for consideration is the timing of the circumstances which caused the Relevant Event. It was submitted that any step taken to avoid the coming into existence of the problems logically must have occurred prior to, or at the time of the problems arising.
  33. The respondent claimed that Mr Carnegie and Mr Plumb appear to have been voting and making decisions in October and November 2007.
  34. The respondent was satisfied that s 51AD(8) has not been complied with, and accordingly the application was rejected.
  35. The respondent relied on s 56AD(8) for the proposition that upon review, there must be sufficient material put before the Tribunal to satisfy it that the applicant should be categorised as a Permitted Individual.
  36. Pursuant to the wording of s 56AD(8), the respondent submitted that:
    - (a) a person may only be categorised as a Permitted Individual if they took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the Relevant Event.<sup>1</sup>
    - (b) as a matter of logic, such steps could only have been taken before the Relevant Event.
    - (c) it is presumed that there has been a Relevant Event, by virtue of the application seeking categorization as a Permitted Individual. Therefore, it is not open for consideration that there was a Relevant Event, and there cannot be a finding that there was not a Relevant Event.
    - (d) all reasonable steps must have been taken. This does not mean all possible steps, only reasonable steps.<sup>2</sup>
    - (e) what steps are reasonable are to be considered from the position of a reasonable builder in the shoes of the Applicant.<sup>3</sup>
    - (f) the reasonable steps are those to avoid the coming into existence of the circumstances that resulted in the relevant event, not the relevant event itself.<sup>4</sup>
    - (g) as to what amounts to reasonable, the respondent relied upon the quote from *Rich v State of Queensland & Ors; Samin v State of Queensland & Ors* [2001 QCA 259 where, McPherson JA said:

---

<sup>1</sup> *Cats v QBSA* [2008]QCCTB 22 at [13]

<sup>2</sup> *Hyde v QBSA* [2003] QBT 30 at [53].

<sup>3</sup> *Hyde v QBSA* [2003] QBT 30 at [58] to [60]; *Darvill v QBSA* [2008] QCCTB 35 at [42]; *Nation v QBSA* [2006] QCCTB 114 at [55]; *Delonga v QBSA* [2004] QCCTB 26 at [33].


<sup>4</sup> *Dellaway v QBSA* [2007]QCCTB 181 at [7].

**For more information on QCAT**

Call 1300 753 228 or visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

GPO Box 1639, Brisbane Qld 4001 Fax: 07 3221 9156

Email: [enquiries@qcat.qld.gov.au](mailto:enquiries@qcat.qld.gov.au) ABN: 13 846 673 994



*"What amounts to reasonable steps necessarily involves investigation of the nature of the harm, the foreseeability and degree of risk of its happening, and the measures reasonably available for preventing or averting it."*

37. The respondent submitted that reasonable steps that could have and should have been taken by the applicant, but were not, include:
- (a) refusing to pass management decision making to others, when they were not directors;
  - (b) during the time when he was a director, not allowing non-directors to make decisions that he considered detrimental to the business;
  - (c) following the advice of the lawyer so that the sale transfer not be a two stage process. As a result of the two stage process there was not a clean break at any one time, hence not a clear demarcation of control;
  - (d) upon failure to make the first stage of completion on 31/12/07, the purchasers should not have been allowed to continue controlling the business;
  - (e) consulting with the accountant to manage and plan the cash flow and financial affairs, and make provision for tax and other liabilities.
38. The respondent submitted, as to the items in s 56AD(8A), the obligation is on the applicant to establish them by evidence. Where that has not occurred, by virtue of s 56AD(8) the applicant needs to establish by evidence that he took all reasonable steps to avoid the existence of that problem.
39. The respondent submitted that once the test under s 56AD(8) has been considered, there is still a need to consider an exercise of discretion.<sup>5</sup>
40. The respondent contended that the issues for decision in relation to the application pursuant to S.56AD(1) are:
- (a) identification of the "Relevant Event";
  - (b) identification of the circumstances that resulted in the happening of the Relevant Event;
  - (c) whether the Applicant took all reasonable steps to avoid the coming into existence of those circumstances; and
  - (d) if the threshold issue is satisfied, should any discretion be exercised to classify the Applicant as a permitted individual.
41. The respondent contends that allowing control of the company to be exercised by non-directors in a manner which the applicant strongly disagreed is a discretionary factor, despite no reckless conduct on behalf of the applicant.
42. The respondent submitted that as a result of the above, all reasonable steps were not taken by the applicant. and accordingly, s51AD(8) had not been satisfied and the applicant's application was rejected.
43. The respondent seeks that the Tribunal confirm the decision under review.

---

<sup>5</sup> See *Hyde* at [70]; *Delonga* at [31]; *Webster v QBSA* [2009] QCCTB 145 at [21] and *Laghai v QBSA* [2008] QCCTB 246 at [20].

## Legislation

44. The respondent relied on s 56 of the Act in its decision to refuse to categorise the applicant as a Permitted Individual.

45. Section 56AC of the Act provides:

“Excluded individuals and excluded companies

(1) [not relevant]

(2) This section applies to an individual if-

(a) after the commencement of this section, a company, for the benefit of a creditor:

(i) has a provisional liquidator, liquidator, administrator or controller appointed; or

(ii) is wound up, or is ordered to be wound up; and

(b) 5 years have not elapsed since the event mentioned in paragraph (a)(i) or (ii) (relevant company event) happened; and

(c) the individual-

(i) was, when the relevant company event happened, a director or secretary of, or an influential person for, the company; or

(ii) was, at any time after the commencement of this section and within the period of 1 year immediately before the relevant company event happened, a director or secretary of, or an influential person for, the company.

(3) [not relevant]

(4) If this section applies to an individual because of subsection (2), the individual is an excluded individual for the relevant company event.”

46. Section 56AD(1) of the Act provides:

An individual may apply to the authority, in the form approved by the Board, to be categorised as a permitted individual for a relevant event if the individual has been advised by the authority, or has otherwise been made aware, that the authority considers the individual to be an excluded individual for the relevant event.

47. Section 56AD(3) of the Act provides:

If the individual applies, the application must include the reasons why the authority should categorise the individual as a permitted individual for the relevant event.

48. Section 56AD(8) of the Act provides:

The authority may categorise the individual as a permitted individual for the relevant event only if the authority is satisfied, on the basis of the application, that the individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.

49. The “relevant event” referred to in s 56(8) refers to the Relevant Event identified in s 56AC.

50. Section 56AD(8A) provides a non-exhaustive list of the circumstances which the Authority may have regard for the purposes of Section 56AD(8) of the Act as follows:-

“In deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event, the authority must have regard to action taken by the individual in relation to the following-

- (a) keeping proper books of account and financial records;
- (b) seeking appropriate financial or legal advice before entering into financial or business arrangements or conducting business;
- (c) reporting fraud or theft to the police;
- (d) ensuring guarantees provided were covered by sufficient assets to cover the liability under the guarantees;
- (e) putting in place appropriate credit management for amounts owing and taking reasonable steps for recovery of the amounts;
- (f) making appropriate provision for Commonwealth and State taxation debts.”

51. Section 56AD(8B) of the Act provides:

Nothing in subsection (8A) prevents the authority from having regard to other matters for deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event.

52. Section 56AF of the Act sets out the procedure to be followed by the Authority if the Authority considers that an individual who is a licensee is an excluded individual for a relevant event.

53. Section 3 of the Act provides, amongst other things, that the objects of the Act are:

- (a) The regulation of the building industry to;
  - (i) ensure the maintenance and proper standards in the industry; and
  - (ii) achieve a reasonable balance between the interests of building contractors and consumers.

54. Part 3 of the Act (which includes all the sections above) establishes a licensing system and authorises the Authority to issue licenses authorising the carrying out and supervising of all classes of building work.

55. Part 3A of the Act was introduced in 1999. The explanatory notes state that “a major deficiency with the existing regulatory structure has been the ability of defaulting contractors to restructure their corporate structure to re-emerge as a “phoenix” company following cancellation of a licence”.

56. Part 3A of the Act was designed to remove individuals who have demonstrated their incapacity to manage finances within the building industry for a period of five (5) years.



57. In the second reading speech the Minister at the time said relevantly that the provisions of Part 3A of the Act (introduced in 1999) were “to prevent the re-emergence of the shonks through the device of “phoenix companies”... and they will have to prove that they could not have avoided the relevant financial catastrophe. This is intended to mean that the relevant event was entirely outside the responsibility of the individual concerned. Examples might be that a spouse absconded with the individuals assets, or that a financial calamity was due to a natural disaster against which it was not possible to insure”.

## REASONS

58. The test to be applied to the review is that set out in s. 56AD(8) which provides:

*“The Authority may categorise the individual as a permitted individual for the relevant event only if the Authority is satisfied on the basis of the application that the individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.”*

60 In *Yunan v Queensland Building Services Authority* [2010] QDC, McGill SC DCJ said:

*“The test in s 56AD(8) requires first, the identification of the relevant event; second, the identification of the circumstances that resulted in the happening of the relevant event; third, a consideration of whether the relevant individual took all reasonable steps to avoid those circumstances coming into existence; and, if satisfied of that, fourth, a decision whether to categorise the individual as a permitted individual. What were reasonable steps depended on what was reasonable for the individual concerned in the circumstances in which he found himself, with such information as he then had.<sup>6</sup> It is not a question of whether he did everything possible to prevent these circumstances from arising, or whether they would not have arisen if he had acted differently. The reasonableness of his behaviour must be assessed by reference to what was known by him at the time, without the benefit of hindsight.<sup>7</sup>”*

59. Section 56AD(8A) provides a number of matters to which attention must be paid when deciding whether an individual “took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event. With respect to:

- (a) keeping proper books of account - there is a claim in paragraphs 3 to 5 of the attachment to the application that books of account were not properly kept and that bank reconciliations were not carried out for over three months;
- (b) seeking financial or legal advice before entering financial arrangements of conducting business, - Varitimos Lawyers were consulted prior to entering into the contract but it is unclear whether the advice provided was followed;
- (c) fraud or theft - there is suggestion of fraud or theft in paragraph 5 of the attachment to the application;
- (d) ensuring guarantees are covered by sufficient assets to cover the liability, there are no relevant guarantees;
- (e) proper credit management - the books and records were not in order

<sup>6</sup> *Randel v Brisbane City Council* [1984] 2 Qd R 276 at 278; *NF v State of Queensland* [2005] QCA 110 at [29]; *Royal North Shore Hospital v Henderson* (1986) 7 NSWLR 283 at 299 per Mahoney JA; *N v State of Queensland* [2004] QSC 290

<sup>7</sup> *Roads and Traffic Authority of NSW v Dederer* [2007] QCA 42 at [18]; *Hegarty v Queensland Ambulance Service* [2007] QCA 366 at [49], [109]

- and there was proper credit management in place;
- (f) appropriate provision for tax - the report to Creditors from Worrells (at page 65 of the List of Documents) indicates that the tax debt was \$209,531, being \$188,823 for GST, and \$20,708 for PAYG.

It is said that the tax debt was understated by \$200,000. There does not seem to have been an appropriate provision for tax. Further, the accounts records were said by the applicant to be wrong suggesting there was incorrect provision made for payment of general creditors.

- 61 Those matters are all concerned with the prudent management of a company as an ongoing business. The focus of the subsection is on prevention rather than dealing with problems after they have arisen
- 62 I accept the evidence of Mr Goodellis and the evidence which he called, however the evidence is not such which could allow a conclusion that Mr Goodellis exercised prudent management. It cannot be concluded that Mr Goodellis ensured keeping proper books of account and financial records or put into place appropriate credit management for amounts owing. Mr Goodellis allowed others to control the company in a way he disagreed with. In my view those decisions and the way in which the company was managed were circumstances along with the loss of a client that resulted in the liquidation.
- 63 In my view Mr Goodellis did not exercise reasonable control over the company and allowed it to trade such that the viability of the company was adversely affected. He did not take reasonable steps for the recovery of outstanding debts and he did not reasonably ensure proper credit management, the proper keeping of books of account or appropriate provision for the payment of liabilities.
- 64 I accept that Mr Goodellis sought some form of financial and legal advice concerning the operation of the business but I am not satisfied he sought and obtained appropriate advice before entering into the arrangements I have set out herein. He did not make appropriate provision for Commonwealth taxation debts.
- 65 The relevant event here is the liquidation of Glentone Australia Pty Ltd and the appointment of liquidators.
- 66 The circumstances that resulted in the happening of the relevant event are the circumstance summarised in paragraphs 59 -64 herein and the consequent inability to maintain liquidity. I do not consider that Mr Goodellis is in the category of a "shonk" as the term was used in the reading speech but I am not satisfied that the applicant took all reasonable steps to avoid the coming into existence of the circumstances which gave rise to the relevant event and I confirm the decision of the Building Services Authority to refuse the application to be categorised as a Permitted Individual.