

**CITATION:** Uljarevic v Queensland Building Services Authority [2013] QCAT 309

**PARTIES:** Mr James Christopher Uljarevic  
(Applicant)  
v  
Queensland Building Services Authority  
(Respondent)

**APPLICATION NUMBER:** **OCR209-11**

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** 12 February 2013

**HEARD AT:** Brisbane

**DECISION OF:** **Mr Jim Allen, Member**

**DELIVERED ON:** 17 June 2013

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The decision of the Queensland Building Services Authority to refuse to categorise Mr James Christopher Uljarevic as a permitted individual is confirmed.**

**CATCHWORDS :** Application to be categorised as a permitted individual – relevant event - bankruptcy - failure to ensure contractual arrangements in writing

*Queensland Building Services Authority Act 1991 S56AD*  
*Yunan v Queensland Services Authority [2011] QCA 1*  
*Yunan v Queensland Services Authority [2010] QDC 158*

**APPEARANCES and REPRESENTATION (if any):**

**APPLICANT :** Mr Uljarevic was self-represented

**RESPONDENT:** The Queensland Building Services Authority was represented by Mr M Robinson, partner of Robinson Locke Lawyers.

## REASONS FOR DECISION

- [1] Mr Uljarevic is a builder who was licensed by the Authority under the *Queensland Building Services Authority Act 1991* (“the Act”). Mr Uljarevic licence was subject to cancellation due to him entering bankruptcy on 26 July 2011<sup>1</sup>. His application to the Authority to be categorised as a permitted individual so that he could retain his licence was refused and he has made application to the Tribunal to review that decision.

### Legal background for decision

- [2] The Tribunal when reviewing such a decision stands in the shoes of the decision maker<sup>2</sup> and conducts the review by way of a fresh hearing on the merits<sup>3</sup>. The Tribunal is to produce the correct and preferable decision<sup>4</sup> with the assistance of the Authority.
- [3] Mr Uljarevic may be categorised as a permitted individual under s 56AD(8) of the Act if he is able to show that he has taken all reasonable steps to avoid the circumstances that led to the relevant event, that is his bankruptcy on 26 July 2011. There are a set of criteria that the Tribunal must have regard when deciding whether an individual has taken all reasonable steps set out in s 56AD(8A) of the Act. The test has been described by McGill DCJ in *Younan v Queensland Building Services Authority*<sup>5</sup> as follows:

“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 the 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. It is not a question of whether he did everything possible to prevent these circumstances from arising, or whether they would 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.”

- [4] McGill DCJ in *Younan*<sup>6</sup> states the following in regard to s56AD(8A) of the Act.

“The authority is required to 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;

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<sup>1</sup> *Queensland Building Services Authority Act 1991* ss 56AC, 56AF and page 1 of exhibit 2 –Notification of bankruptcy.

<sup>2</sup> *Queensland Civil and Administrative Tribunal Act 2009* s19.

<sup>3</sup> *Queensland Civil and Administrative Tribunal Act 2009* s20(2).

<sup>4</sup> *Queensland Civil and Administrative Tribunal Act 2009* s20(1).

<sup>5</sup> [2010] QDC 158 at para 26.

<sup>6</sup> *Ibid* at para 23 and 24.

- (c) reporting fraud or theft to police;
- (d) ensuring guarantees provided were covered by sufficient assets to cover the liability under the guarantee;
- (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.

It is immediately apparent that these are all concerned with the prudent management of a company as an ongoing business, or even in the case of (b), something which is to be done before one conducts business arrangements. In other words the focus of this subsection is on prevention rather than dealing with problems after they have arisen, except in the case of (c), which is obviously concerned with a situation where a problem has arisen outside the control of the individual in question.”

- [5] Fraser JA in the Court of Appeal decision in *Younan v Queensland Building Services Authority*<sup>7</sup> made the point that s56AD(8B) states that nothing in s56AD(8A) prevents the authority from having regard to other matters for deciding whether an individual took all reasonable steps and accordingly s56AD(8A) could not be regarded as a comprehensive statement of the matters which should be taken into account or as justifying an implication that the only relevant considerations under s56AD(8) concerned the prudent management or establishment of the company’s business, although it seems likely that those will be the relevant considerations in most cases.

### **The Relevant Event**

- [6] The relevant event here is Mr Uljarevic entering bankruptcy on a debtor’s petition on 26 July 2011. The statement of affairs<sup>8</sup> in respect of his bankruptcy filed by Mr Uljarevic shows an amount owed to him by Monte Constructions Pty Ltd of \$142,000.00 and that he was a shareholder director of that company. There are unsecured creditors totalling \$336,368.14. Relevantly an amount of \$52,156.04 was owed to Sky Scaffold (Qld) Pty Ltd and \$190,000.00 to CS Development Group Pty Ltd.

### **The Circumstances Resulting in the Happening of Relevant Event**

- [7] The companies mentioned above as unsecured creditors were associated with a Mr Steven Pantic who Mr Uljarevic stated was a relative of his. There was a history of developments between Monte Constructions controlled by Mr Uljarevic and CS Developments controlled by Mr Pantic. According to Mr Uljarevic there was never a problem in Monte Constructions receiving payment from CS Developments in regard to projects and due to the close relationship between the parties some variation work was agreed orally. In November 2008 contracts were entered for the construction of two dwellings at Othaki Road, Ashgrove for \$450,000.00 between CS Developments and Monte Constructions as the builder. There was a deed of variation in

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<sup>7</sup> [2011] QCA 1 at para 22.

<sup>8</sup> Exhibit 2 - pages 32 to 54.

regard to one of the building contracts which resulted in an \$117,100 increase in the amount to be paid under that contract.

- [8] Sky Scaffold according to Mr Uljarevic and his witnesses Mr Ben Uljarevic and Mr Nikola Tokavic supplied scaffolding to projects which Monte Constructions built for CS Developments for free or at least at a substantial discount. There were no written agreements in regard to these arrangements and no invoices issues to Monte Constructions where any payment had been made.
- [9] In March 2009 Mr Uljarevic entered a contract to purchase a block of land at 138 Outlook Crescent, Bardon from CS Developments for \$569,000.00. Mr Uljarevic later entered into a deed of agreement on 28 May 2009 with CS Developments by which that company agreed to loan Mr Uljarevic the amount of \$150,000.00 to assist with the purchase price and a joint venture in regard to the construction of a dwelling on it. The balance of the purchase price was financed by a loan from the Westpac bank. Therefore Mr Uljarevic had limited if any equity in the property. A further deed was entered in December 2009 by which CS Developments agreed to loan Mr Uljarevic the sum of \$40,000.00 for the building of a retaining wall on the site. The deeds of agreement enabled CS Developments to request repayment of the loans on demand and lodge a caveat over the property or take other security over the property.
- [10] When the building contracts at Othaki Road were completed in December 2009 Monte Constructions had not been paid enough to satisfy the sub-contractor claims in respect of the contracts as a result of oral variations to the building contracts. The amount which was outstanding was said to be about \$200,000. Mr Uljarevic on behalf of Monte Constructions attempted unsuccessfully to negotiate this with Mr Pantic on behalf of CS Developments in April 2010.
- [11] Mr Uljarevic engaged BCI lawyers in regard to these matters and received advice on 29 April 2010 to forward a final invoice to CS Constructions for the Othaki Road project with a draft letter to CS Development attached<sup>9</sup>. On 6 May 2010 CS Developments lodged a caveat over the premises at 138 Outlook Crescent.. Mr Uljarevic received further advice from BCI Lawyers on 25 may 2010 in regard the caveat that it was allowable under the agreement and he may wish to make an offer to CS Developments which sees him out of everything for the best commercial return and that this would involve rectification of any defects in the houses built by Monte Constructions, transferring Mr Uljarevic's equity in Outlook Crescent to Mr Pantic or selling it "as is" and dealing with the outstanding financial matter fairly and equitably<sup>10</sup>.
- [12] Monte Constructions had issued the payment claim on 24 May 2010 and the response from CS Developments was that they would seek legal advice. Monte Constructions was then issued with a demand from Sky Scaffold in respect of invoices for the supply of scaffold at Othaki Road and another site in the amount of \$43,968.56. Mr Uljarevic was also issued with a demand by CS Developments through its lawyers, Wheldon & Associates for repayment of the amount of \$190,000 owing

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<sup>9</sup> Exhibit 2 pages 57-58.

<sup>10</sup> Exhibit 2 page 142-144.

under the deeds of agreement for 138 Outlook Crescent within 60 days<sup>11</sup>.

- [13] Action was then commenced by Monte Constructions and Sky Scaffold for adjudication under the *Building and Construction Industry Payments Act 2004*. Monte Constructions in respect of its invoice to CS Developments and Sky Scaffold in respect of its invoices to Monte Constructions.
- [14] Mr Uljarevic negotiated with Mr Pantic to try to settle all of the issues and an understanding was reached that Mr Uljarevic would place the property at 138 Outlook Crescent on the market and the loans would be paid out and if that was done the adjudication would not be pursued. This was set out in an email from Mr Pantic to Uljarevic on 25 June 2010 which was forwarded by him to BCI Lawyers with a request for them to check that his list (Mr Pantic's) was the same as mine (Mr Uljarevic's).
- [15] In correspondence from BCI Lawyers to McCullough Robertson, Lawyers dated 16 June 2010<sup>12</sup> it was acknowledged that there was a lack of written proof in regard to the claim by Monte Constructions against CS Developments and that upon analysis of the available material there had in fact been an overpayment by CS Developments to Monte Constructions of \$5,300. There correspondence is incomplete but terms of an offer are incorporated that would involve the terms mentioned above with a further payment by Monte Constructions of the amount of the repayment.
- [16] The decision in the Sky Scaffold adjudication claim was given on 1 July 2010<sup>13</sup> and Monte Constructions was ordered to pay the amount of \$43,968.56. It appears that the question of the supply of scaffold to Monte Constructions by Sky Scaffold for free was not considered by the adjudicator as this issue was not raised in the payment schedule. Mr Uljarevic blames his solicitors BCI Lawyers for this.
- [17] Following this a deed of settlement was drafted by BCI Lawyers and signed by all of the respective parties on 23 July 2010. The deed dealt with all of the disputes and was a bar to any further claims except in accordance with the deed. Mr Uljarevic was to place 138 Outlook Crescent on the market and Mr Uljarevic and Mr Pantic were to act together to ensure that both 136 and 138 Outlook Crescent were well presented with Mr Pantic agreeing to pay \$5,000 towards this work. The payment claim by Monte Constructions against CS Developments was to be withdrawn and the caveat over 138 Outlook Crescent was to be withdrawn by CS Developments.
- [18] The deed gave Mr Uljarevic 14 days to pay the amount of \$140,000.00 in full and final settlement of all claims. If that did not occur then under clause 1.3 he was to pay \$95,000.00 within 6 months and an additional \$195,000.00 within 18 months. If clause 1.3 was not complied with the adjudication amount of \$42,000 was payable within two weeks of the failure to comply. Mr Uljarevic also guaranteed the payment to and indemnified Sky Scaffold against any loss in respect of the amount owing

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<sup>11</sup> Exhibit 2 page 145.

<sup>12</sup> Exhibit 5 pages 29-30.

<sup>13</sup> Exhibit 2 pages 69-77.

to it by Monte Constructions. The deed had noted that Monte Constructions did not accept the scaffold claim

- [19] The land at 138 Outlook Crescent sold in March 2011 at a price which Mr Uljarevic states was only sufficient to pay out the debt to the Westpac bank. He blames Mr Pantic was lowering the price on the block at 136 Outlook Crescent for forcing the sale at an undervalue.
- [20] Mr Uljarevic had not made any payments under the deed. He says this was as a result of the fact that he borrowed money and loaned it to Monte Constructions to pay out all of the liabilities of that company.
- [21] Monte Constructions had stopped trading in May 2010 due to the breakdown in the relationship with Mr Pantic as his company CS Developments was the main source of income for Monte Constructions.
- [22] Sky Scaffold obtained judgment in respect of adjudication. Mr Uljarevic received a demand from Wheldon & Associates in respect of this judgment by letter of 15 June 2011<sup>14</sup>. CS Developments and Sky Scaffolds filed a claim in the District Court on 3 June 2011 against Mr Uljarevic to enforce his obligations under the deed claiming the amount of \$51,366.04 by way of the guarantee for payment of the Sky Scaffold claim and the amount of \$190,000 owing on 138 Outlook Crescent<sup>15</sup>.
- [23] Mr Uljarevic obtained advice from P M Lee Solicitors with a letter dated 15 June 2011<sup>16</sup> setting out the claims and there instructions that they were not to proceed in read to them. Mr Uljarevic next step then was to file his bankruptcy petition.

## Discussion

- [24] In his application to be categorised as a permitted individual Mr Uljarevic states the main cause of the relevant event as the inability to recover amounts owing and that he first became aware of this in April/May 2010. In a later statement he said his personal bankruptcy was not his fault. He tried for over one year to avoid it seeking legal advice, spending over \$20,000 in legal expenses just to try to resolve issues and try to get paid, but as time was going on, the legal fees in which he had to pay out to protect himself became very expensive and in the end he could no longer afford it and had no choice but then to file for bankruptcy.
- [25] The Authority considered that the relevant event occurred because, in accordance with legal advice, Mr Uljarevic was insolvent by virtue of his failure to satisfy the terms of the settlement deed dated 23 July 2010 and with the need to enter the deed appearing to result from the various liabilities in relation to Mr Pantic in existence at the time.
- [26] While it appears counterintuitive that a failure to recover amounts owing could result in bankruptcy where the only debtor listed is Mr Uljarevic's own company and the creditors are those entities with whom he had entered the deed of 23 July 2010 the Tribunal accepts that the inability of Monte Constructions to recover the amounts needed to be paid to sub-

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<sup>14</sup> Exhibit 2 pages 96-97

<sup>15</sup> Exhibit 5 pages 31 36

<sup>16</sup> Exhibit 2 pages 29-30

contractors for work done at Othaki Road from CS Developments was one of the prime circumstances that led to the relevant event. It is clear that up until that point in time the relationship between the parties had been such that there was no issue with payments being made by CS Developments upon request by Monte Constructions. But for some reason the position changed and Monte Constructions was unable to recover an amount in the vicinity of \$200,000.00.

- [27] The relationship between the parties was very close Monte Constructions could be said to be dependent on CS Developments in terms of CS Developments supplying Monte Constructions with the bulk of its work and the arrangement for the supply of scaffolding to Monte Constructions by Sky Scaffold. There was also a joint venture and loan agreement in regard to 138 Outlook Crescent.
- [28] Once Monte Constructions started to pursue payment of the amount it thought due on Othaki Road the building work stopped, Sky Scaffold claimed for the supply of scaffold and steps were taken to call in the loan.
- [29] Mr Uljarevic obtained legal advice and a deed of settlement was entered and if the land at 138 Outlook Crescent had been sold for the amount necessary to pay out the Westpac loan, agents and legal costs and the amount owing to CS Developments then that could have been the end of the issue. That did not occur and the land sold for only enough to payout the bank and presumably legal costs. While Mr Uljarevic says that Mr Pantic contributed to this by lowering the price on the adjoining block the fact is that he had put himself in the position where he had no equity in the property and no other source of funds. And so the deed was enforced. The Tribunal accepts that Mr Uljarevic was unable to pay out the amounts required under the deed of settlement prior to the sale of the land due to him financing the payment of Monte Constructions sub-contractors. The inability of Mr Uljarevic to meet his obligations under the deed of 23 July 2010 then inevitably led to his bankruptcy.

### **The Reasonable Steps Taken to Avoid the Circumstances that resulted in the Relevant Event**

- [30] Did Mr Uljarevic take all reasonable steps to avoid these circumstances. Mr Uljarevic acknowledged that many of the dealings of Monte Constructions with Mr Pantic's entities were conducted orally and said that this was due to the closeness of the relationship and in the case of Sky Scaffold it did not seem to make sense to have contracts where the supply was by one company and he would be on-charging it to another company owned by the same person, Mr Pantic. This lack of writing was pressed by the Authority as failing to take a step which would have been reasonable in all the circumstances.
- [31] If written variations had been in place in regard to Othaki Road then there would have been an ability to claim the amounts owing to sub-contractors from CS Developments. If there had been a documented arrangement in place with Sky Scaffold then the outcome of adjudication claim would be expected to have been different. That said the Tribunal accepts that BCI Lawyers has contributed to the issue in regard to the

adjudication claim by not including the relevant details in the payment schedule. That said the case would have been that much stronger if there was a written arrangement in place.

- [32] It is clear that any steps involving Monte Constructions were taken in Mr Uljarevic's capacity as a director of the company. Noting the words of McGill DCJ that s56AD(8A) is directed to the prudent management of a company as an ongoing business the Tribunal considers that the business transactions of Monte Constructions should have been properly documented to ensure that the company was able to collect amounts owing to it and knew what amounts were owed by it and so it was able to properly bring and defend claims.
- [33] The fact that the dealings were with entities associated with people with whom the directors of the company had personal relationships should not have been a factor. It should always be in contemplation that relationships can breakdown. There are statutory requirements to be met not only under the *Domestic Building Contracts Act 2001* as nominated by the Authority but also for company law and income tax purposes. These are separate legal entities and transactions between associated entities are required to be documented. Here we have a third entity with transactions involving two associated entities the fact that those entities were associated should not have made any difference to the third entity.
- [34] The Tribunal considers that the failure of Mr Uljarevic as director of Monte Constructions to ensure that transactions entered by the company were in writing constitute failure to take reasonable steps to keep proper books of account and financial records and putting in place appropriate credit management for amounts owing and taking reasonable steps for recovery of the amounts. Though if it does not come within those headings it can also be considered as another matter in terms of s56AD(8B) in any event it goes to the prudent management of a company as an ongoing business.
- [35] Involving lawyers in the recovery of amounts owing was a reasonable step taken, but the fact that there was no written variations in regard to Othaki Road, meant that the lawyers were not able to pursue that claim successfully. Also the fact that there were no invoices available in regard to Sky Scaffold diminished the prospects of success in defending that claim. The Tribunal again accepts there was some issue with the legal work in regard to the adjudication. The Tribunal notes that if in accordance with the deed of settlement of 23 July 2010 the loan from CS Developments to Mr Uljarevic had been satisfied the Sky Scaffold claim would have been released without the requirement for any payment to be made.
- [36] Mr Uljarevic's claims that he expended \$20,000 in legal fees to try to resolve the legal issues and get paid. That may be true and the result was the deed of settlement of 23 July 2010, unfortunately due to Monte Constructions not being in the position to pursue the claim for payment against CS Constructions meant that Mr Uljarevic was required to make all payments. But if he had have complied with the deed it would as mentioned have been the end of the matter. It is not that he ran out of money to pursue his claim it is that he did not have the funds to comply with the agreement he made to settle the claim and his bankruptcy was



the result of the legal claims made when he did not pay what he had agreed to under the deed.

- [37] This also raises the issue of Mr Uljarevic guaranteeing the payment by Monte Constructions to Sky Scaffold at a time when his only disclosed assets were the loan to Monte Constructions which could not be repaid as the company was not trading and the land at 138 Outlook Crescent in which he had little or no equity. Clearly Mr Uljarevic had not ensured that the guarantee was covered by sufficient assets which would have been a reasonable step in those circumstances.
- [38] There is no evidence that Mr Uljarevic took accounting or legal advice at the time of entering the arrangement for the purchase of the land at 138 Outlook Crescent. He was entering transactions where he acquired an asset for a price of \$569,000 for which he was indebted in the amount of \$550,000 and there was to be expenditure of a further amount to construct a dwelling on the property which would need to be funded. His ability to successfully complete the transaction was totally dependent on his relationship with Mr Pantic as all of his work was through Pantic's entity CS Developments and so if that relationship failed he would not have the funds to complete the obligations and would be in a position of owing a substantial amount to the party with whom the relationship had failed and that is precisely what happened. It would have been reasonable to seek advice about the risks of entering a transaction in these circumstances and the protections which were available to avoid what occurred in this case. Mr Uljarevic did not take those reasonable steps.
- [39] Mr Uljarevic provided some MYOB accounts to the Tribunal. While the Tribunal accepts that these show transactions entered by Monte Constructions they do not constitute books of account and do not give a picture of the financial position of Monte Constructions prior to the happening of the relevant event. Therefore they are not evidence of any reasonable steps having been taking in that regard.
- [40] There were no issues raised in regard to Commonwealth and State taxation or fraud or theft.

## **Discussion**

- [41] Ultimately, I conclude that Mr Uljarevic has not taken the reasonable steps necessary to avoid the circumstances that led to the relevant event by firstly failing as director of Monte Constructions to ensure that all that company's dealing with Mr Pantic's entities were fully documented and then by not taking appropriate financial or legal advice at the time of entering the contract for the purchase of 138 Outlook Crescent and the deed of agreement in regard to the loan and joint venture. The result has been that when Monte Constructions needed to obtain payment from one Pantic entity for an amount of \$200,000 it was not able to and another Pantic entity was able to obtain an adjudication in regard to debts which were not owed by Monte Constructions to that company in the final amount of \$51,366.04.

[42] The relationship between the parties had failed. Monte Construction had no work and Mr Uljarevic had no ability to pay the amounts owing to CS Developments in respect of 138 Outlook Crescent as he had not obtained any financial or legal advice which could have protected his position or given him some alternative scenarios in case something such as this occurred. This inevitably led to Mr Uljarevic filing his debtor petition because he was unable to pay the amounts owed to the Pantic companies.

### **Order**

[43] The Tribunal is not satisfied that Mr Uljarevic took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event and the decision of the Authority is confirmed.