

CITATION: Gauci v Queensland Building Services Authority
[2013] QCAT 433

PARTIES: Mr George Gauci
(Applicant)
V
Queensland Building Services Authority
(Respondent)

APPLICATION NUMBER: OCR045-12

MATTER TYPE: Occupational regulation matters

HEARING DATE: 23 October 2012 & 18 February 2013

HEARD AT: Brisbane

DECISION OF: **Dr B Cullen, Member**

DELIVERED ON: 6 August 2013

DELIVERED AT: Brisbane

ORDERS MADE:

- The 17 January 2012 decision of the Queensland Building Services Authority refusing to categorise Mr Gauci as a permitted person in relation to his bankruptcy is confirmed; and**
- George Gauci's Application for Review is dismissed.**

CATCHWORDS: OCCUPATIONAL REGULATION – Building – Application to become Permitted Individual following bankruptcy dismissed; Applicant did not take “all reasonable steps” in relation to legal debt incurred.

Queensland Building Services Authority Act 1991 s 56AD

APPEARANCES and REPRESENTATION (if any):

APPLICANT: George Gauci, Self-Represented

RESPONDENT: Malcolm Robinson, Robinson Locke Litigation Lawyers, instructed by the Queensland Building Services Authority

REASONS FOR DECISION

- [1] George Gauci is a man in his early 70's who has been a builder for his entire career. He is not the sort of builder one might engage to build a deck or a carport. Rather, Mr Gauci is the sort of builder who looks at a 1,000 square metre block, imagines a skyscraper, and endeavours to work out how to purchase adjoining properties in order to carry off a multi-million dollar deal. There is no question that he has been successful in many of his ventures, and that he is a man with big ideas, and the ability to execute them.
- [2] However, one of Mr Gauci's development projects wound up in the Planning & Environment Court and resulted in his incurring a substantial liability to his then planning and development lawyers, McCullough Robertson.

Unpaid legal fees lead to bankruptcy

- [3] Whilst Mr Gauci took steps to try and obtain additional financing in order to pay McCullough Robertson, he was unable to secure a lender during the height of the global financial crisis. Eventually, McCullough Robertson took proceedings against him in relation to the debt in the Queensland District Court, resulting in a default judgment in their favour for \$107,614.51. Thereafter, Mr Gauci was bankrupted following McCullough Robertson's creditors petition in the Federal Magistrates Court. These facts are not in dispute.
- [4] The bankruptcy has then posed further difficulties for Mr Gauci, in relation to his license as a nominated supervisor under the Queensland Building Services Authority Act. As a consequence of his bankruptcy, which is a "relevant event" for the purposes of the legislative regime surrounding builder licensing in Queensland, Mr Gauci must now apply to be a "permitted individual" in order to retain his license.

Did Mr Gauci take "Reasonable Steps" to avoid bankruptcy?

- [5] In making an application to be categorised as a permitted individual, Section 56AD of the *Queensland Building Services Authority Act 1991* provides, relevantly:

(1) 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.

(8) 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.

(8A) 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.

(8B) 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.

[6] It is now necessary for the Tribunal, in reviewing the decision of the QBSA made 17 January 2012, to decide whether Mr Gauci took all reasonable steps to avoid his bankruptcy, considering the criteria set out above.

[7] At paragraph 30 of the QBSA's closing submissions, it is asserted that there were 3 causes of Mr Gauci's bankruptcy:

1. Mr Gauci's failure to pay McCullough Robertson the legal costs of Gauci Developments Queensland, which he had guaranteed, leading to the District Court's default decision in relation to his unpaid legal costs and the subsequent Creditor's Petition; and
2. Gauci Developments Queensland's inability to pay liabilities that had been guaranteed by Mr Gauci; and
3. Mr Gauci's failure to honour the guarantees that he had provided.

[8] At the hearing, there was no real argument focussed on the actual causes of Mr Gauci's bankruptcy, which I accept to be as described by the QBSA. What is in dispute is whether Mr Gauci took reasonable steps in relation to those 3 causes of his bankruptcy.

Mr Gauci did not manage the incurring of legal fees

[9] It is not disputed that Mr Gauci failed to honour his guarantee to legal costs incurred with McCullough Robertson Lawyers. In this review, the Tribunal must consider whether those legal costs were reasonably incurred at the relevant point in time. In this respect, Mr Gauci's arguments were circuitous, and did not afford the Tribunal with a clear understanding as to why it was reasonable for Gauci Developments Queensland to incur this liability in pursuit of litigation in the Planning and Environment Court, guaranteed by him.

[10] Mr Gauci endeavoured to suggest that McCullough Robertson never provided him with any information in relation to the guarantees that he

signed, nor in relation to the firm's billing structure, and anticipated expenditure. Throughout the hearing, Mr Gauci claimed that McCullough Robertson only gave him the name of the partner who would do the work, along with limited information in respect of hourly rates. I found this surprising, for the reason that legislatively mandated client care responsibilities are associated with the provision of legal services.

[11] As it is this Tribunal's obligation to afford parties that appear before it procedural fairness, I considered that it was necessary to then request that McCullough Robertson produce the relevant documents, if indeed there were any (as Mr Gauci claimed there would not be, save for perhaps what he called an "open retainer"), to this Tribunal for its consideration. On 31 May 2013, McCullough Robertson complied with the Tribunal's Notice to Produce, disclosing a number of documents. These included the following:

- (a) Client agreement with Gauci Group Pty Ltd signed by George Gauci on 18 October 2010 showing:
 - (i) Estimate of \$10,000 to \$15,000 for lodgement of caveats and advising generally in relation to the Bundaberg property purchases;
 - (ii) Estimate of \$75,000 to \$100,000 for litigation regarding the enforcement of the Contract of Sale in relation to the Bundaberg properties.
- (b) Client agreement with Gauci Group Pty Ltd signed by George Gauci on 23 November 2010 showing:
 - (i) Estimate of \$7,000 to \$12,000 for various preliminary work and advice;
 - (ii) Estimate of \$20,000 to \$100,000 for commencing proceedings against Council and conducting same.
- (c) Letter dated 8 February 2009 to George Gauci of Gauci Developments (Qld1) Pty Ltd, referring to the *Legal Professions Act 2007*.
- (d) Letter dated 9 April to Mr G. Gauci referring to a Master costs agreement.
- (e) Signed Master costs agreement dated 10 April 2008 in respect of Gauci Developments (Qld) Pty Ltd, GD (Qld1) Pty Ltd, GD (Qld2) Pty Ltd and GD (Qld3) Pty Ltd.
- (f) Signed costs agreement dated 29 September 2008 in respect of Gauci Developments Pty Ltd in respect of purchase of property at 45 & 49 Mulgrave Street and 99 Walker Street.

[12] Mr Gauci was afforded the opportunity to provide the Tribunal with further submissions following McCullough Robertson's compliance with the Tribunal initiated Notice to Produce. He has not provided the Tribunal with any additional submissions.

- [13] I consider that the documents produced amply demonstrate that McCullough Robertson has provided not only cost estimates, but has also provided signed cost agreements, and letters referable to their obligations under the *Legal Professions Act 2007 (Qld)*.
- [14] There is then, no evidence before the Tribunal that indicates that the incurring of this liability by Gauci Development (Qld) was handled reasonably. Whilst Mr Gauci may well have had his eye on the various development projects he was involved in, and is clearly a skilled businessman, I do not consider it reasonable for him to have taken his eye off of the legal spend being incurred.
- [15] Given the size of the ventures that Mr Gauci was involved in, it may well have been a reasonable step to employ someone to take care of legal administrative matters. There is no evidence that any step of this nature had been taken by Mr Gauci. Additionally, there is no evidence before the Tribunal in relation to the negotiations that took place with McCullough Robertson prior to their taking legal action in either the District Court, or in relation to the filing of their Creditor's Petition, other than assertions by Mr Gauci that he did take such steps. These assertions lend little weight to Mr Gauci's arguments, as the Tribunal would expect such assertions to be supported by way of some form of documentary evidence, and there is none.

Orders

- [16] In these circumstances, the Tribunal confirms the 17 January 2012 decision of the QBSA refusing to categorise Mr Gauci as a permitted person in relation to his bankruptcy, and dismisses Mr Gauci's Application for Review.