

**CITATION:** *Dobson v Queensland Building and Construction Commission* [2015] QCAT 243

**PARTIES:** Shaun Gerald Dobson  
(Applicant)  
v  
Queensland Building and Construction Commission  
(Respondent)

**APPLICATION NUMBER:** OCR075-14

**MATTER TYPE:** General administrative review matters

**HEARING DATE:** 19 June 2015

**HEARD AT:** Brisbane

**DECISION OF:** Dr Crane, Member

**DELIVERED ON:** 23 June 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The decision of the QBCC to reject an application seeking a classification as a Permitted Individual is confirmed.**

**CATCHWORDS:** General administrative review matters - permitted individual - whether the decision of the QBCC to categorize applicant as an Excluded Individual was reasonable

*Queensland Building and Construction Commission Act 1991 (Qld)*

*Younan v Queensland Building Services Authority* [2010] QDC 158

**REPRESENTATIVES:**

**APPLICANT:** Self

**RESPONDENT:** Represented by Mr M Robinson of Robinson Locke Lawyers

## REASONS FOR DECISION

### Previous History and Conduct

- [1] In or around August 2007 the Applicant, Mr Dobson was introduced to a Chinese national, a Mr Jerry Shen.
- [2] On the evidence given by the Applicant Mr Shen impressed him with a conspicuous display of apparent wealth and this impression was confirmed during a two week visit to Shanghai where he met with Shen and inspected Shen's core business which centred around the manufacture of candles. Shen's apparent ownership of an expensive motorcar amongst other displays appears to have made a strong and lasting impression on Mr Dobson.
- [3] Subsequently, Shen and Mr Dobson agreed to enter into a Joint Venture arrangement to construct a house at Bulimba using some material imported from China by Shen. Difficulties quickly arose however due to the topography of the site which added to cost and to provision of materials supplied by Shen which did not comply with Australian standards.
- [4] In due course Mr Dobson ceased work on the site but only after incurring a personal debt of \$125,000.
- [5] After Mr Dobson's withdrawal Shen allegedly completed the construction using labourers from China. How Shen was able to complete the project while simultaneously professing that he lacked the funds to pay Mr Dobson has not been explained.
- [6] Despite this unfortunate beginning Mr Dobson retained a relationship with Shen and with a new participant, Mr Leach who was a solicitor then in private practice.
- [7] It appears that Shen convinced Mr Dobson that his \$125,000 debt could be discharged out of the profits which would be generated by the construction and sale of three houses in Norman Park.
- [8] Shen requested, and Mr Dobson paid, an additional \$75,000 for a 10% interest in this project. His personal debt at this point had risen to \$200,000,
- [9] Finance for this project was obtained from the CBA under three Consumer Credit Agreements totalling, in aggregate, \$6,614,800.
- [10] Mr Dobson, with Shen, was a signatory on all three contracts.
- [11] Site works and construction of the first house commenced and to facilitate the periodic payment of drawdowns against the available bank funding Mr Dobson signed a number of blank drawdowns. (The precise number of blank drawdown documents is uncertain).
- [12] The existence of blank drawdowns and, according to Mr Dobson, the lack of any supervision from CBA, enabled Shen to withdraw the entire funding facility and to deposit the funds into his personal account in China.

- [13] Whilst construction was underway in Norman Park Shen requested Mr Dobson fit-out a fashion store on the Queen street Mall. Mr Dobson undertook this work with no documentation and a promise from Shen to pay him after the shop opened. The shop opened and failed. Mr Dobson was not paid.
- [14] In or around late 2009 or early 2010 Mr Dobson ceased work on the Norman Park project as funds were not being remitted by Shen.
- [15] In a phone call shortly after Shen advised Mr Dobson that “the money was gone”.
- [16] Mr Dobson has not heard from Shen since then.
- [17] Ultimately, the CBA took possession of the properties and offered them for sale. The sales resulted in a net deficiency to the bank of \$3,482,694.
- [18] Mr Dobson filed a debtors petition and was bankrupted on 5 February 2014.
- [19] On February 13 2014 the QBCC sent a notice to Mr Dobson informing him that it considered him to be an “excluded individual” pursuant to s.56AC of the QBCC Act.
- [20] On 13 March 2014 Mr Dobson applied under s.56AD(1) of the QBCC Act to be categorized as a “permitted individual”.
- [21] On 18 March 2014 the QBCC advised Mr Dobson that his application had not been successful.
- [22] On 9 April 2014 Mr Dobson made application to this tribunal to review the QBCC decision.

### **Issues to be determined in this review**

- [23] The relevant statutory framework applicable to “excluded and permitted individuals” is outlined in part 3A of the QBCC Act.
- [24] Section 56AC provides:
- (1) This section applies to an individual if –
    - (a) after the commencement of this section, the individual takes advantage of the laws of bankruptcy or becomes bankrupt (relevant bankruptcy event); and
    - (b) 5 years have not elapsed since the relevant bankruptcy event happened.

### Comment

- [25] There is no contention that Mr Dobson was bankrupted on 5 February 2014 and remained so at the hearing date, 19 June 2015. Further that a “relevant event”, which is the terminology used in subsequent sections, includes a “relevant bankruptcy event”. The occurrence of such an event results in an individual being categorised as an “excluded individual” for licensing purposes. It is open to such an excluded individual however to apply to be categorised as a permitted individual.

[26] The statutory process is outlined in s 56AD with the relevant subsections as follows:

(1) An individual may apply to the commission, 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 commission, or has otherwise been made aware, that the commission considers the individual to be an excluded individual for the relevant event.

(3) If the individual applies, the application must include the reasons why the commission should categorise the individual as a permitted individual for the relevant event.

(7) Nothing in subsection (6) stops the commission, after the time required under subsection (5) has elapsed, from confirming the commission's refusal to categorise the individual as a permitted individual for the relevant event.

(8) The commission may categorise the individual as a permitted individual for the relevant event only if the commission is satisfied, on the basis of the application, that –

(a) section 56AC(5) applies to the individual for the relevant event; or

(b) 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) For subsection (8)(b) [above], 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 commission 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.

[27] In the event, as in this case, where an application is made to be categorised as a permitted individual, there are four broad areas which call for examination under s 56AD(8). These areas were listed by McGill DCJ in *Younan v QBSA* [2010] QDC 158 at para [26], viz.

1. the identification of the relevant event.

2. the identification of the circumstances that resulted in the happening of the relevant event.

3. a consideration whether the relevant individual took all reasonable steps to avoid those circumstances coming into existence.

4. if satisfied [of 3], a decision whether to categorise the individual as a permitted individual.

[28] I have already identified the relevant event as Mr Dobson's bankruptcy and the broad circumstances that led to the relevant event under my review of the previous history.

[29] Using McGill DCJ's scheme, the central factor for consideration is whether Mr Dobson took all reasonable steps to avoid the circumstances that led to his bankruptcy.

In reaching a conclusion under this heading, the Act references the 6 factors (noted at para [26] above) which should be considered. Subsection (8B) allows for the consideration of other factors and these will be discussed subsequently. Of the 6 factors, 4 are relevant. These 4 factors are:

[30] **1. Keeping proper books of account and financial records.**

Comment

Mr Dobson failed to provide any books of account and financial records in any form. In his testimony, he indicated, again and again, that he left financial matters to others. The "others" appeared to be Shen, or Shen's accountant.

[31] **2. Seeking appropriate financial or legal advice before entering into financial or business arrangements or conducting business.**

Comment

Mr Dobson gave evidence that he met with his accountant, Mr Wilson, prior to entering into the financial arrangement with Shen, who advised him that "the bank would not lend the money". This appeared to be the end of any direct relationship with his accountant and subsequently he relied upon Shen's accountant, though he did not state that he had ever met the person and seemed unsure of his name.

[32] His legal adviser was solicitor, Mr Leach, who also held a 20 percent interest in the Norman Park joint venture. Mr Dobson could give no indication of any specific legal advice received from this person apart from a vague assurance that "everything would be OK". As a consequence, Mr Dobson did not seek legal advice prior to signing 3 Consumer Credit agreements for over \$6 million and he admitted that at the time he had no understanding of joint and several liability, assuming instead that he would be only liable for 10 percent of the sum, should a deficiency arise.

[33] **3. Reporting fraud and theft to the police.**

Comment

Though the facts may indicate a prima facie case of fraud by Shen, the only attempt to report the matter took place, in an across-the-counter conversation with a police officer at Loganlea Police Station.

[34] **4. Putting in place appropriate credit management for amounts owing and taking reasonable steps for recovery of the amounts.**

Comment

Although Mr Dobson seems to have accurately calculated the amounts owing to him by Shen, he took no action to recover these amounts even though Shen owned real property within the jurisdiction.

[35] The following subsection (8B) allows for consideration of other factors beyond those listed in (8A):

Nothing in subsection (8A) prevents the commission 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.

[36] As to what constitutes reasonable steps is given by McGill DCJ (at para [26] of the judgement) as follows:

“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 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.”

[37] Taken together, I cannot accept that in the circumstances in which he found himself, Mr Dobson could believe that his actions in not seeking financial advice, not seeking legal advice, not attempting recovery of monies owed and entering into a debt of over \$6 million were objectively reasonable.

[38] One can feel a great deal of sympathy for Mr Dobson as an unsophisticated person who fell under the influence of a quite unscrupulous individual. One can also give him credit for discharging his financial obligations to his subcontractors, even at the cost of having to sell his home and other chattels.

[39] However, these matters, though compelling in human terms, and though perhaps appropriate subsection (8B) considerations in some circumstances, are not in this instance of sufficient weight to overcome his quite egregious failure to moderate, or indeed even address, the unfolding circumstances which led directly to his bankruptcy.

[40] Additionally, throughout his evidence, Mr Dobson failed conspicuously to make a case that his actions were reasonable under the prevailing circumstances. In such a circumstance, McGill DCJ concludes (at para [37] of the judgement):

“... subsection (8) authorises the characterisation of an individual as a permitted individual only if the authority is satisfied of the relevant matter

on the basis of the application, that is to say on the basis of the case made by the applicant. It follows that if relevant considerations are not addressed by the applicant, so that the applicant fails to show in a relevant respect that he took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event, then the application will fail.”

[41] Accordingly, the decision of the QBCC is correct and is confirmed.