

**CITATION:** *Queensland Building and Construction Commission v Mudri* [2015] QCATA 78

**PARTIES:** Queensland Building and Construction Commission  
(Applicant/Appellant)  
v  
Miroslav Mudri  
(Respondent)

**APPLICATION NUMBER:** APL257-14

**MATTER TYPE:** Appeals

**HEARING DATE:** 16 March 2015

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Thomas, President**  
**Acting Senior Member Browne**

**DELIVERED ON:** 12 June 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. The appeal on Ground 1 is allowed and the decision of the Tribunal on 21 May 2014 is set aside.**
- 2. The application to review the decision of whether Mr Mudri should be categorised as a permitted individual is to be returned to the tribunal for reconsideration according to law and the findings disclosed in these reasons for judgment.**

**CATCHWORDS:** APPEAL – OCCUPATIONAL REGULATION – PERMITTED INDIVIDUAL – where Tribunal found applicant took all reasonable steps – where reasons given for the Tribunal’s decision – whether discretion under s 56AD properly exercised – whether error in the application of s 56AD

*Building and Construction Industry Payments Act 2004 (Qld) s 5, s 29*  
*Queensland Building and Construction Commission Act 1991 (Qld) s 3, s 56AD, s 86*

*Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 19, s 24, s 146, s 147*

*Ericson v Queensland Building and Construction Commission [2014] QCA 297; cited  
Kehl v Board of Professional Engineers of Queensland [2010] QCATA 58; cited  
Laidlaw v Queensland Building Services Authority [2010] QCAT 70; cited  
Mudri v Queensland Building and Construction Commission [2014] QCAT 222  
Younan v Queensland Building Services Authority [2010] QDC 158; cited*

## REPRESENTATIVES:

**APPLICANT:** Mr R Anderson of Counsel instructed by  
Robinson Locke Litigation Lawyers

**RESPONDENT:** Mr G Watson of Counsel instructed by  
Cranston McEachern Lawyers

## REASONS FOR DECISION

- [1] Some years ago Mr Mudri operated a building business, Bridgeport Constructions Pty Ltd, until he resigned as a director.
- [2] Before Mr Mudri resigned as a director, liquidators were appointed to Bridgeport because V & ME Constructions Pty Ltd applied to wind up the company.
- [3] Bridgeport and V & ME had a previous business relationship that ended in a legal dispute. Bridgeport owed V & ME money.<sup>1</sup> Bridgeport did not pay the money. Mr Mudri, as director, obtained legal advice and Bridgeport commenced Supreme Court proceedings against V & ME. Bridgeport also forgave a number of company debts. The winding up that followed and the appointment of liquidators was a '*relevant company event*'.<sup>2</sup>
- [4] Mr Mudri was categorised as an '*excluded individual*'<sup>3</sup> because he was a director of Bridgeport. This meant that Mr Mudri could no longer hold a licence unless he became a 'permitted individual'.

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<sup>1</sup> On 16 December 2008, V & ME obtained a decision in the amount of \$613,025.00 (the adjudicated decision) under the *Building and Construction Industry Payments Act 2004 (Qld)*.

<sup>2</sup> Under s 56AC of the *Queensland Building and Construction Commission Act 1991 (Qld)* (the QBCC Act).

<sup>3</sup> QBCC Act s 56AC(4).

- [5] Mr Mudri applied to the Queensland Building and Construction Commission (QBCC) to be categorised as a *'permitted individual'*.<sup>4</sup> His application was refused.
- [6] Mr Mudri made an application to the Tribunal for a review of the QBCC's decision. The Tribunal made an order that the decision of the QBCC dated 15 August 2013 be set aside and Mr Mudri be categorised as a permitted individual.<sup>5</sup>
- [7] The QBCC has filed an application for leave to appeal or appeal the Tribunal's decision. There are five grounds of appeal, some of which raise errors of law and some are mixed fact and law for which leave is required.
- [8] At the oral hearing, Mr Anderson for the QBCC narrowed the grounds of appeal to simply whether the Tribunal misapplied the test in s 56AD of the QBCC Act. Mr Anderson says that the learned Senior Member failed to consider the nature of the adjudicated decision that is *'always a debt'* and could not have been avoided by the Supreme Court proceedings. Mr Anderson says that this is a case where Bridgeport *'did stand by'* in relation to the happening of the relevant event and the steps taken by Mr Mudri as director were to ensure that Bridgeport could not satisfy the debt.
- [9] Mr Watson, on behalf of Mr Mudri, argues that the learned Senior Member was dealing with *'the case'* that was put to him by the QBCC and that Mr Mudri answered the case. Mr Watson argues that Mr Mudri addressed issues at the hearing such as the reason why Bridgeport forgave company debts.

### **What is the Tribunal's function on review?**

- [10] The Tribunal on review stands in the shoes of the QBCC as the decision maker to arrive at the *'correct and preferable'* decision.<sup>6</sup> The Tribunal must decide the review *'by way of a fresh hearing on the merits'*.<sup>7</sup> There is no requirement to *'identify an error'* in either the process or the reasoning that led to the decision and there is no *'presumption'* that the original decision was correct.<sup>8</sup>
- [11] The QBCC as the *'decision-maker'* has a duty to *'help'* the Tribunal so that it can make its decision.<sup>9</sup> The QCAT Practice Direction applicable to hearings in administrative review proceedings says that the decision-maker's role is *'not adversarial'*. However, in *'discharging its obligations'* the

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<sup>4</sup> QBCC Act s 56AD.

<sup>5</sup> *Mudri v Queensland Building and Construction Commission* [2014] QCAT 222.

<sup>6</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) s 20.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Kehl v Board of Professional Engineers of Queensland* [2010] QCATA 58, [8].

<sup>9</sup> QCAT Act s 21.

decision-maker must '*properly test the evidence*' relied upon by the applicant, to '*perform its function of assisting the tribunal*'.<sup>10</sup>

- [12] There is no presumption that Mr Mudri had to 'meet the case' against him. As said in *Laidlaw v Queensland Building Services Authority*,<sup>11</sup> there is no formal onus of proof in merits review but the Tribunal must be satisfied that the '*provision under consideration can be invoked on the information or material before it*'.<sup>12</sup> The Tribunal said:

Consideration has been given to the issue of onus in merits review proceedings in the federal arena before the Administrative Appeals Tribunal, where similarly the AAT Act does not deal with the issue of onus of proof. Generally there is no onus... However, practically, a party will want to adduce evidence which supports the party's case, since the Tribunal can only make its decision on the material before it... In the absence of appropriate evidence the tribunal will not be free to make the decision sought by the party. This has sometimes been described as an evidentiary burden,... but there is no formal onus of proof. The question is whether the Tribunal is satisfied that the provision under consideration can be invoked on the information or material before it.<sup>13</sup>

- [13] In this case, the learned Senior Member, in performing a function on review, was required to identify the issues in determining whether Mr Mudri should be categorised as a permitted individual. Mr Mudri as the applicant in the review proceedings had, as said in *Laidlaw's* case, the '*evidentiary burden*' to adduce or present evidence to support his application so that the Tribunal could make the correct and preferable decision.

### **What is the relevant test under s 56AD of the QBCC Act?**

- [14] Section 56AD requires a consideration of whether the 'individual' (applying to be categorised as a permitted individual) '*took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event*'.<sup>14</sup> In deciding whether the individual took '*all reasonable steps*', s 56AD(8A) provides that the QBCC or the Tribunal on review must have regard to 'action' taken by the individual in relation to certain matters (as provided under s 56(8A)) and may have regard to other matters for deciding whether an individual '*took all reasonable steps*'.<sup>15</sup>
- [15] In *Younan v Queensland Building Services Authority*,<sup>16</sup> McGill DCJ said that, in determining whether all 'reasonable steps' were taken, consideration should be given to what action was taken at the relevant time and what was

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<sup>10</sup> QCAT Practice Direction No 3 of 2013.

<sup>11</sup> [2010] QCAT 70.

<sup>12</sup> *Ibid*, [23].

<sup>13</sup> *Ibid*.

<sup>14</sup> QBCC Act s 56AD(8)

<sup>15</sup> *Ibid*, s 56AD(8B).

<sup>16</sup> [2010] QDC 158.

reasonable in all of the circumstances without the benefit of hindsight.<sup>17</sup> McGill DCJ said:

The section speaks about taking reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event. 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 ... 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>18</sup>

- [16] As we see it the tasks involved in applying the test in s 56AD are:
- a) the identification of the relevant event;
  - b) the identification of the circumstances that resulted in the happening of the relevant event;
  - c) identification of the steps taken by the relevant individual;
  - d) consideration of whether the relevant individual took all reasonable steps to avoid those circumstances coming into existence, which involved a consideration of whether the steps were reasonable;
  - e) if satisfied of that, a decision whether to categorise the individual as a permitted individual.
- [17] The circumstances that resulted in the happening of the relevant event and the steps taken are often interrelated because the individual will have taken the steps based on the circumstances, as they were known at the relevant time. We think the correct question to consider in applying the test in s 56AD was framed in *Younan's* case - the question is not whether Mr Mudri '*did everything possible*' to prevent these circumstances from arising or whether the circumstances would not have arisen if he '*had acted differently*'. The question is whether Mr Mudri has taken '*all reasonable steps*' in the context of all of the circumstances as they were '*known to him*' at the relevant time, without the benefit of hindsight.
- [18] In *Younan's* case, the explanatory note to the bill for the proposed QBCC Act was identified (in part). The explanatory note said that the reason why the categorisation of permitted individual applications under s 56(8) was introduced was to prevent 'phoenix' company restructure. In other words, the re-emergence of defaulting contractors that have restructured their

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid, [26].

corporate structure so as to avoid the consequences of default. McGill DCJ said:

... the explanatory note to that bill which stated in part:

“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. ... The sole ground for categorisation as a permitted individual is set out in s 56(8) of the Act, namely the applicant can demonstrate all reasonable steps were taken to avoid the occurrence of the facts giving rise to the relevant event. The ground is intended to restrict classification as a permitted individual to instances where the applicant has been a victim of fraud or defalcation by, for example, a partner or spouse.”<sup>19</sup>

- [19] McGill DCJ said that what was in fact enacted under the QBCC Act in respect of s 56AD was a ‘*much wider test*’ than that described in the explanatory note. He said that the test in s 56AD is ‘clear’ but applying it may be a ‘*difficult and complex process*’ depending on the particular case and the circumstances that resulted in the happening of the relevant event.<sup>20</sup> McGill DCJ said:

What has been enacted by the legislature in s 56AD(8) is not the test described in the explanatory note, or the test described by the minister. The test as enacted is not restricted in anything like the way contemplated by the note or the speech of the minister. The test enacted is perfectly clear, though its application may be a difficult and complex process. That will depend very much on what, in a particular case, were the circumstances that resulted in the happening of the relevant event. In one way the test is much wider than that contemplated by the minister, but in another way the legislation in its operation is much wider, since a situation could easily arise where the legislation will operate to block someone who could not reasonably be described as a “shonk”....<sup>21</sup>

- [20] In this case the learned Senior Member has exercised his discretion on review under s 56AD of the QBCC Act to categorise Mr Mudri as a permitted individual. As said in *Younan’s* case, the application of the test in s 56AD is wide because it may be a difficult and complex process and will depend on the circumstances that resulted in the happening of the relevant event. A failure to properly exercise the discretion under s 56AD is an error of law for which leave is not required.

### **What was the relevant event?**

- [21] The relevant event was the appointment of liquidators.

### **What are the circumstances that resulted in the happening of the relevant event?**

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<sup>19</sup> *Younan’s* case, [32].

<sup>20</sup> *Ibid*, [35].

<sup>21</sup> *Ibid*.

- [22] The circumstances that resulted in the happening of the relevant event were the failure by Bridgeport to pay the adjudicated amount that was, by its nature, a statutory debt and led to fresh winding up proceedings in June 2013 based on the existence of the adjudicated decision. Associated with this was the failure by Bridgeport to respond to the notice of the winding up proceedings and the failure to appear in May 2013 in the winding up proceedings.

**What were the steps taken by Mr Mudri in all of the circumstances?**

- [23] On 16 December 2008, V & ME were successful in obtaining an adjudicated decision under the *Building and Construction Industry Payments Act 2004* (Qld) (B&CIP Act) in the amount of \$613,025.00 against Bridgeport.
- [24] The B&CIP Act requires the adjudicated amount to be paid as a matter of law. As found by the learned Senior Member, the purpose (together with s 29) of the B&CIP Act is '*to ensure that sub contractors and suppliers are paid the adjudicated amount promptly even though there might be ongoing contractual disputes between the parties*'.<sup>22</sup>
- [25] Mr Mudri, as director, consulted lawyers and received advice about what steps could be taken to avoid paying the adjudicated amount. This was because Mr Mudri believed the adjudicated decision to be wrong and '*he had no liability to pay it*'.<sup>23</sup> The legal advice led to Bridgeport commencing proceedings in the Supreme Court (on 30 January 2009) against V & ME, claiming damages for approximately \$1.5 million.
- [26] Before Bridgeport commenced proceedings, V & ME took steps to enforce the adjudicated decision and applied to the Supreme Court on 5 January 2009 for judgement. V & ME were successful in taking enforcement action against property owned by Bridgeport and were awarded approximately \$222,237.65 reducing the adjudicated decision (debt) to \$424,000 plus interest.<sup>24</sup> Bridgeport was successful, however, with a consent order setting aside the statutory demand on 31 March 2009.<sup>25</sup>
- [27] The Supreme Court proceedings commenced by Bridgeport were defended but no active steps were taken by either party to '*prosecute those proceedings*'.<sup>26</sup> V & ME made a further attempt to windup Bridgeport for failing to pay the adjudicated amount in October 2009 but there was no outcome of the proceedings because orders were made and no steps were taken by the parties (to prosecute).<sup>27</sup>
- [28] Mr Mudri received further advice from his lawyers in March 2010 that it would be in Bridgeport's best interests '*to leave matters in abeyance*'.<sup>28</sup>

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22 Reasons for decision, [8].

23 Ibid, [10].

24 Appellant's outline of submissions filed 29 July 2014.

25 Reasons for decision, [12] and [23].

26 Ibid, [12].

27 Ibid.

28 Ibid, [14].

Advice was also given by Mr Mudri's lawyers that if V & ME did not prosecute the winding up by early April 2010 then the matter '*by virtue of the Corporations Law*' will be dismissed.<sup>29</sup>

- [29] Mr Mudri, as director, '*adhered*' to the advice given by his lawyers and took no steps to prosecute the Supreme Court civil proceeding or take any further action in the winding up application.<sup>30</sup>
- [30] Mr Mudri's lawyers provided further advice in 2010 that even if the Supreme Court proceedings were '*pursued*', V & ME had no assets to satisfy any judgment in Bridgeport's favour. The learned Senior Member found that the obligation to pay the adjudicated amount to V & ME would remain but '*in theory*' could be offset against any judgment in Bridgeport's favour.<sup>31</sup>
- [31] Bridgeport took further steps in 2010 including divesting itself of assets after paying all creditors of the company, excluding the debt owed to V & ME, and Mr Mudri resigned as a director of Bridgeport on 1 April 2012.<sup>32</sup>
- [32] The profit and loss statement for Bridgeport for the year ended 30 June 2010 shows '*loans forgiven*' in the amount of \$5,523,314 in 2010.<sup>33</sup> When giving his evidence at the hearing, Mr Mudri was unable to identify how it was in the best interests of Bridgeport to waive the debts and he did not say whether he (Mr Mudri) acted on any advice in relation to the decision to forgive debts. Mr Mudri was asked, during cross-examination by the representative for the QBCC, whether Bridgeport received any benefit from the \$5.5 million forgiveness of debt. Mr Mudri said '*I don't know*'. The relevant extract from the transcript is as follows:

ROBINSON: Now, just going back to 5.5 million dollars forgiveness of debt. To be precise it is \$5,523,314.00. How was it in the interest of Bridgeport to waive that debt?

MUDRI: I don't know? That aspect I don't know.

ROBINSON: It didn't receive any benefit from doing it?

Can I put to you that it didn't receive any benefit from waiving the debt?

MUDRI: Who did? Bridgeport?

ROBINSON: Bridgeport received no benefit from waiving 5.5 million dollars' worth of debt owed to it.

MUDRI: No. You mean in money form?

ROBINSON: Yeah, received no benefit?

MUDRI: Mmm.<sup>34</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid, [15].

<sup>31</sup> Ibid, [15].

<sup>32</sup> Ibid, [16].

<sup>33</sup> Exhibit '6', p 7.

<sup>34</sup> Appellant's transcription of proceedings, page 33, lines 21-40.



- [33] On 30 May 2013, V & ME again applied to the Supreme Court for the appointment of liquidators. The learned Senior Member found that the papers for the winding up would have been served at Bridgeport's registered office that remained at Mr Mudri's residence in Maleny. Mr Mudri gave evidence at the hearing that he was not aware of the application for the winding up of Bridgeport because he did not receive the '*papers*'.<sup>35</sup> Mr Mudri also gave evidence that he spent most of his time away from his residence because he was working in country towns building houses.<sup>36</sup> The winding up of Bridgeport proceeded and an order was made on 21 June 2013. The learned Senior Member accepted Mr Mudri's evidence that he did not receive notice of the proceedings (to wind up) on the basis that he had '*no alternative, really, but to accept [his evidence]*'.<sup>37</sup>

### **Where the steps taken all reasonable steps to avoid the circumstances?**

- [34] Mr Mudri, as director, took steps including obtaining advice about how to avoid paying the adjudicated amount, issuing but not actively prosecuting Supreme Court proceedings, divesting Bridgeport's assets, forgiving debts owed to Bridgeport, resigning as a director, being absent from Bridgeport's registered office, and not responding to the service of a notice to appear for the winding up proceedings.
- [35] As we have said, the test in s 56AD requires an identification of the steps taken by the relevant individual (Mr Mudri), and a consideration of whether the individual (Mr Mudri) took all reasonable steps to avoid those circumstances coming into existence, which involves a consideration of whether the steps were reasonable.
- [36] In this case there was more than one circumstance that resulted in the happening of the relevant event. There was the failure to pay the adjudicated decision that was a statutory debt that led to fresh winding up proceedings, the failure to respond to the notice (to appear in the winding up proceedings) and the failure to appear at the winding up proceedings.
- [37] As to the steps taken, we have identified the following:

#### *Issuing the Supreme Court proceedings:*

- There was a requirement to pay the adjudicated decision that was by its nature a statutory debt. There was no defence to this adjudicated decision. The Supreme Court proceedings (instituted following legal advice) could not, and did not, have the effect of extinguishing the adjudicated decision or allowing a defence to any claim made based upon it. Instituting the proceedings was not, therefore, a step taken to avoid the circumstances.

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<sup>35</sup> Reasons for decision, [17].

<sup>36</sup> Ibid, [18].

<sup>37</sup> Ibid.

*Not pursuing the Supreme Court proceedings:*

- The step taken in not pursuing the Supreme Court proceedings was based upon legal advice concerning whether Bridgeport could honour any judgment. It was not a step which, on any view, was taken to avoid the circumstances.

*Divesting Bridgeport's assets, and forgiving debts owed to Bridgeport, resigning as a director and being absent from Bridgeport's registered office:*

- None of these steps were aimed at avoiding the circumstances.
- Rather, they were consistent with ensuring that, when the circumstances lead to the relevant event happening, no financial impact would be felt by Mr Mudri or his companies.

- [38] None of the steps taken by Mr Mudri can be clearly identified as steps taken to avoid the circumstances (and certainly not reasonable steps to avoid the circumstances). The only step which might potentially have had an impact was the institution of the Supreme Court proceedings, but only to the extent that a negotiated arrangement may have eventuated. In circumstances where this had limited prospect of being successful and no steps were taken to advance such negotiations, the step of instituting the proceedings is not a reasonable step.
- [39] The legal advice obtained by Mr Mudri was about what steps could be taken by him as director to avoid paying the adjudicated amount because he believed the adjudicated decision to be wrong. Mr Mudri acted on the legal advice and instituted proceedings in the Supreme Court but did not actively prosecute them because he was advised not to. Mr Mudri obtained further legal advice that even if the Supreme Court proceedings were pursued by Bridgeport, V & ME had no assets to satisfy any judgment in Bridgeport's favour.
- [40] Mr Mudri also took steps to divest the company of assets after paying creditors of Bridgeport, excluding the debt owed to V & ME. Mr Mudri resigned as a director of the company and was absent from the company's registered office because he was working away from his residence (the registered office).
- [41] The steps taken by Mr Mudri, especially those relating to divesting the assets, could not have avoided the circumstance. It seems that the steps taken were designed to ensure that if the relevant event happened, Bridgeport would have no assets to which V & ME could have access. Rather than taking all reasonable steps to prevent the circumstances from arising, Mr Mudri took steps only consistent with preparation to enable the circumstances to lead to the relevant event without any assets being available to the petitioner.

### Did the Tribunal misapply the test in s 56AD of the QBCC Act?

- [42] The learned Senior Member identified the test to be applied in s 56AD(8) and what McGill DCJ said in *Younan's* case.<sup>38</sup> He correctly said s 56AD requires the identification of the relevant event, the identification of the circumstances that resulted in the happening of the relevant event and a '*consideration of whether the relevant individual took all reasonable steps to avoid those circumstances coming into existence*'.<sup>39</sup>
- [43] The learned Senior Member did not correctly apply the test in s 56AD because he did not consider whether all reasonable steps were taken to avoid the relevant event. In this case we have identified all of the steps taken. None of these steps could have avoided the relevant event so it was not open to conclude that all reasonable steps were taken to avoid the event. Many of the steps taken were such that if the relevant event happened there would be no company assets to pay the debt.
- [44] The learned Senior Member has taken a more narrow view of the test and he did not consider the steps taken in all of the circumstances as they were known to Mr Mudri at the time, such as the nature of the debt. As we have said, *Younan's* case referred to the test in s 56AD as being 'wide' and it will depend on the circumstances that resulted in the happening of the relevant event.
- [45] The learned Senior Member found that this was not a case where Bridgeport '*simply stood by*' and refused to pay the adjudicated amount. He referred to Bridgeport '*actively*' instigating proceedings in the Supreme Court to recover money believed to be owing by V & ME, resisting winding up applications on two occasions and making an assessment as to the risk of proceeding with litigation (against V & ME) based on legal advice.<sup>40</sup>
- [46] The learned Senior Member did not consider all of the circumstances that resulted in the happening of the relevant event, such as the nature of the statutory debt. This was important because even if Bridgeport was successful in the Supreme Court proceedings (against V & ME), any judgment could not relieve the obligations to pay. Even if the Supreme Court proceedings were successful so that any amount could be 'set off' against the debt, the steps taken to start, but not pursue, the proceedings were not all reasonable steps because the proceedings were effectively stopped.

### Conclusion

- [47] The learned Senior Member has misapplied the test in s 56AD because he took a narrow view of the test and he did not consider all of the circumstances, as they were known to Mr Mudri at the time, that resulted in

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<sup>38</sup> Reasons for decision, [4].

<sup>39</sup> *Younan's* case [26]. See Reasons for Decision, [5].

<sup>40</sup> *Ibid*, [21]-[22].

the happening of the relevant event, so that he could be satisfied (on review) that Mr Mudri took all reasonable steps.

- [48] In this case the relevant event was the appointment of liquidators. The circumstances leading to this event were the failure to pay the adjudicated amount, the failure to respond and appear in the winding up proceedings. The starting point which set in train the circumstances which lead to the relevant event was the adjudicated decision.
- [49] The nature of the adjudicated decision was essentially that there was no defence and the debt had to be paid. This was the statutory framework for adjudicated awards under the B&CIP Act.
- [50] Mr Mudri obtained legal advice because he believed that the adjudicated decision was wrong and he did not want to pay it. He issued Supreme Court proceedings but did not pursue the proceedings. Mr Mudri divested company assets and forgave debts owed to Bridgeport before resigning as a director. He was also absent from Bridgeport's registered office and did not respond to the notice (to appear) and appear in the winding up proceedings. An obvious step which could have been taken was to pay the adjudicated amount. The steps taken by Mr Mudri were not all reasonable steps to avoid the circumstances coming into existence.
- [51] The appeal is allowed. The decision of 21 May 2014 is set aside. The appeal involves an error of law in the exercise of the Tribunal's discretion under s 56AD. The matter should therefore be returned to the tribunal for reconsideration according to law and our findings made.<sup>41</sup>

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<sup>41</sup> QCAT Act, s 146. See *Ericson v Queensland Building and Construction Commission* [2014] QCA 297.