



Supreme Court  
New South Wales

---

Case Name: Aravanis and Roy in their capacity as the Trustees of the property of Lynette Blackburn, a Bankrupt v Cunningham

Medium Neutral Citation: [2022] NSWSC 1429

Hearing Date(s): 20 October 2022

Date of Orders: 20 October 2022

Decision Date: 20 October 2022

Jurisdiction: Common Law

Before: Davies J

Decision:

1. Pursuant to r 7.15(3) of the Uniform Civil Procedure Rules 2005 (NSW), the NSW Trustee and Guardian be appointed as the tutor of the Second Defendant.
2. Pursuant to r 7.14(2) of the Uniform Civil Procedure Rules 2005 (NSW) the tutor of the Second Defendant is not required to carry on the proceedings by a solicitor provided that a solicitor at NSW Trustee and Guardian has the conduct of the matter.
3. Judgment for the plaintiff for possession of the land comprised in Lot 1 in Strata Plan 86380 being the land situated at and known as 1/21 Marcel Avenue, Randwick, NSW 2031.
4. Leave to plaintiff to issue a writ of possession to enforce the judgment of the court.
5. First defendant to pay the plaintiff's costs of proceeding.

Catchwords: LAND LAW – possession of land – where one

registered proprietor made bankrupt – where no defence to claim

Legislation Cited: Uniform Civil Procedure Rules 2005 (NSW) rr 7.14, 7.15

Cases Cited: Nil

Texts Cited: Nil

Category: Principal judgment

Parties: Andrew Aravanis and Ronii Prakash Roy in their capacity as the Trustees of the property of Lynette Blackburn, a Bankrupt (Plaintiff)  
Linda Cunningham (First Defendant)  
Harold Blackburn (Second Defendant)

Representation: Counsel:  
D Olthof (Plaintiff)  
No appearance (First Defendant)  
T Lau (Second Defendant)

Solicitors:  
Craddock Murray Neumann Lawyers (Plaintiff)  
No appearance (First Defendant)  
NSW Trustee & Guardian (Second Defendant)

File Number(s): 2022/204679

Publication Restriction: Nil

## **JUDGMENT**

- 1 The plaintiffs are the trustees in bankruptcy of Lynette Blackburn, having been appointed on 16 April 2019. Lynette Blackburn and the second defendant Harold Blackburn were the registered proprietors of a property at 1/21 Marcel Avenue, Randwick. The plaintiffs as trustees of Ms Blackburn's bankrupt estate commenced these proceedings on 13 July 2022 seeking judgment for possession of the property to enable the administration of the bankrupt estate.
- 2 The second defendant is a person who is the subject of a financial management order made on 6 August 2019 in favour of the NSW Trustee and Guardian. The NSW Trustee and Guardian applies by notice of motion to be appointed as the tutor of the second defendant and seeks orders pursuant to r

7.14 and 7.15 of the *Uniform Civil; Procedure Rules 2005* (NSW) that the second defendant is not required to carry on the proceedings by a solicitor provided that a solicitor at the NSW Trustee and Guardian has the conduct of the matter. The plaintiff does not oppose that order. In the circumstances of the financial management order having been made I consider that the orders sought by the NSW Trustee and Guardian should be made.

- 3 It appears that there was only one other person occupying the house, being the first defendant. The circumstances of her occupation are unclear but it appears likely it was with the consent of Lynette Blackburn on some basis or other. In any event, the proceedings have been served on the first defendant on 26 August 2022 as an affidavit of Rodney Finn of 2 September 2022 attests.
- 4 No notice of appearance nor defence has been filed by the first defendant.
- 5 The second defendant does not oppose the order for possession. Indeed the second defendant wishes such an order to be made to enable the property to be sold so that the second defendant's share of the proceeds can be used for his care.
- 6 In all of those circumstances, I consider I should make an order for possession rather than requiring the plaintiff to file formally for default judgment against the first defendant.
- 7 The orders that I make therefore are these:
  1. Pursuant to r 7.15(3) of the *Uniform Civil Procedure Rules 2005* (NSW) the NSW Trustee and Guardian is appointed as the tutor of the second defendant.
  2. Pursuant to r 7.14(2) of the UCPR the tutor of the second defendant is not required to carry on proceedings by a solicitor provided the solicitor at the NSW Trustee and Guardian has the conduct of the matter.
  3. Judgment for the plaintiff for possession of the land comprised in Lot 1 in Strata Plan 83680 being the land situate at and known as 1/21 Marcel Avenue, Randwick.
  4. Leave to plaintiff to issue a writ of possession to enforce the judgment of the court.

5. First defendant to pay the plaintiff's costs of proceeding.

\*\*\*\*\*

## **Amendments**

14 November 2022 - Typographical error in para [2]

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.