



Supreme Court
New South Wales

Case Name: Kazar trading as in his capacity as trustee of the bankrupt estate of Mark Renet v Mark Renet

Medium Neutral Citation: [2024] NSWSC 99

Hearing Date(s): 14 February 2024

Date of Orders: 14 February 2024

Decision Date: 14 February 2024

Jurisdiction: Common Law

Before: Davies J

Decision:

1. Pursuant to rule 14.28 of the Uniform Civil Procedure Rules 2005 (NSW), the defence filed 17 November 2023 be struck out.
2. Judgment for possession for the plaintiff of the land comprised in Certificate of Title with folio identifier 7/SP22143, being the land situated at and known as Unit 7, 3 Charles Street, Queanbeyan NSW 2620.
3. The plaintiff have leave to issue a writ of possession to enforce order 2 of these orders.

Catchwords: LAND LAW – possession of land – where registered proprietor made bankrupt – trustee registered as registered proprietor – where no defence to trustee’s claim for possession – where local Council issued an order preventing habitation of the property – life-threatening condition of property – trustee’s concern for liability if council’s order not complied with – defence struck out – judgment for possession

Legislation Cited: Bankruptcy Act 1966 (Cth) s 90
Uniform Civil Procedure Rules 2005 (NSW) r 14.28

Cases Cited: Renet v The Owner – Strata Plan SP 22143 [2023] FCA 631.
The Owner – Strata Plan SP 22143 v Renet [2022] FedCFamC2G 953I

Texts Cited: Nil

Category: Procedural rulings

Parties: Kazar trading as in his capacity as trustee of the bankrupt estate of Mark Renet (Plaintiff)
Mark Renet (Defendant)

Representation: Counsel:
P Notley (Plaintiff)
Mark Renet (In person) (Defendant)

Solicitors:
Era Legal (Plaintiff)
Self-represented (Defendant)

File Number(s): 2023/333355

Publication Restriction: Nil

JUDGMENT

- 1 Until 25 August 2023, the defendant was the registered proprietor of land known as 7/3 Charles Street, Queanbeyan (“the property”). On 8 June 2021 a judgment was obtained by the Strata Owner of the complex where the property was located against the defendant in the Local Court for an amount of a little over \$12,000. The judgment appears to have been for unpaid strata levies.
- 2 Subsequently, when the judgment was not satisfied, a bankruptcy notice was served on the defendant. On 27 May 2022 the Federal Circuit Court made an order sequestrating the defendant's estate on the petition of the Strata Owner. The official trustee was then appointed as his trustee.
- 3 The defendant sought a review of the making of the sequestration order. That application for review was dismissed by Judge Neville in the Federal Circuit and Family Court of Australia on 16 November 2022: *The Owner – Strata Plan SP 22143 v Renet* [2022] FedCFamC2G 953. The defendant appealed to the

Federal Court of Australia. On 15 June 2023 that appeal was dismissed by Raper J: *Renet v The Owner – Strata Plan SP 22143* [2023] FCA 631.

- 4 On 6 December 2022 the plaintiff became the defendant's bankruptcy trustee and on 25 August 2023 a transmission application under section 90 of the *Bankruptcy Act 1966* (Cth) was finalised, with the result that the present plaintiff, as the defendant's trustee in bankruptcy, became the registered proprietor of the property.
- 5 On 2 June 2021, Queanbeyan-Palerang Regional Council issued an emergency Stop Use Order in respect of the property. The requirement of the Notice was that the property was not to be used for habitation purposes. The Council considered that that the fire rating ceiling between Units 7 and 8 had been compromised and constituted a life-threatening hazard as there was no fire separation between the two units. It does not appear that the Stop Use Order has been complied with, with the defendant apparently still in occupation of the property.
- 6 The plaintiff now seeks possession of the property by a statement of claim filed 20 October 2023. In addition to his right to possession of the property as the defendant's trustee, the plaintiff holds a concern that, because he is now the registered proprietor of the property, he may become liable if any injury is sustained as a result of the non-compliance with the Stop Use Order.
- 7 The defendant, who appears for himself, has filed a defence on 17 November 2023. The defence does not provide any defence to the plaintiff's right to possession of the property as the defendant's bankruptcy trustee. Rather, the defence appears to raise matters related to the underlying dispute which led to the judgment and the defendant's bankruptcy. The defence raises, in a number of places, the prospect of settling the matter with the Strata Owner. It makes allegations of criminality, seemingly, against the plaintiff, although that is by no means clear.
- 8 These are matters which appear to have been touched in passing when the defendant applied for a review of the sequestration order that had been made against him, and when he appealed against the dismissal of the review.

- 9 The defence as filed does not disclose any defence to the plaintiff's claim. Indeed, in all of the circumstances it is difficult to envisage that there could be any defence to the plaintiff's right to possession of the land. Quite apart from anything else, the defence does not comply with the *Uniform Civil Procedure Rules 2005* (NSW) regarding pleading.
- 10 Nothing said by the defendant in oral submissions advanced his position. He considered that he was still the owner of the property.
- 11 In the light of the Stop Use Order and the potential liability of the plaintiff if a fire occurred, the matter needs to be finalised quickly. The defendant's right to occupy the property ceased by no later than 25 August 2023.
- 12 In those circumstances, the defence filed by the defendant on 17 November 2023 will be struck out pursuant to Rule 14.28 of the *Uniform Civil Procedure Rules 2005* (NSW). There will be judgment for possession for the plaintiff of the land comprised in certificate of title folio identifier 7/SP22143, being the land situated and known as Unit 7, 3 Charles Street, Queanbeyan. The plaintiff has leave to issue a writ of possession forthwith.

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.