

SUPREME COURT OF QUEENSLAND

CITATION: *Johnson v Johnson* [2026] QSC 151

PARTIES: **JANICE JOHNSON (ALSO KNOWN AS JANICE MARGARET JOHNSON)**
(plaintiff/applicant)
v
TROY JOHNSON
(first defendant/respondent)
PAUL ANTHONY EDWARD EVERINGHAM & SUSAN LEWIS TRADING AS EVERINGHAM LAWYERS AS PARTNERS IN PARTNERSHIP ABN 86 887 863 546
(second defendants/respondent)

FILE NO/S: BS No 1105 of 2025

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 22 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 22 June 2026

JUDGE: Doyle JA

ORDERS:

- 1. Pursuant to s 187(2) of the *Land Title Act 1994* (Qld), the registrar of titles is directed to rectify the title in the freehold land register to the estate in fee simple of the property described as Lot 7 on RP166285, title reference 15970250, located at 24 Mary Street, Woodford, Queensland (the Property), with the effect that the plaintiff and the first defendant will be the registered owners of the Property as joint tenants.**
- 2. Judgment is given in favour of the Plaintiff against the first defendant in the amount of \$18,999.95, being \$16,000 for her claim and \$2,999.95 for interest on that sum to today, in respect of the relief sought in paragraphs (d) and (e) of the Claim filed 19 March 2025 pursuant to the Acknowledgement and Undertaking.**
- 3. The first defendant pay the plaintiff's costs of the application and of the proceedings to date against the first defendant on the indemnity basis.**

4. Otherwise adjourn the application filed 3 June 2026 for any other relief as against the first defendant to a date to be fixed.

CATCHWORDS: *Land Title Act 1994*, s 187
Uniform Civil Procedure Rules 1999 (Qld), r 110, r 166, r 288
Embleton Motor Co Pty Ltd v St Kilda Beach Taxi School and Staffing Pty Ltd [2014] WASCA 183, cited
GMW Group Pty Ltd (Receivers and Managers Appointed) (In Liq) v Billingham [2012] QSC 140, cited
Kazal v Thunder Studios Inc [2023] FCAFC 174, cited
MacDonald v Australian Securities and Investments Commission [2007] NSWCA 304, cited
My Distributors Pty Ltd v Omaq Pty Ltd (1992) 36 FCR 578, cited
Shannon v Simmons [2020] QSC 115, cited
Sneddon v New South Wales [2012] NSWCA 351, cited

COUNSEL: C J Crawford for the plaintiff/applicant
 No appearance for the defendants/respondents

SOLICITORS: Spire Law for the plaintiff/applicant
 No appearance for the defendants/respondents

- [1] **DOYLE JA:** This is an application by the plaintiff pursuant to r 288 of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR) for default judgment against the first defendant.
- [2] The plaintiff is the mother of the first defendant.
- [3] They were registered owners (as joint tenants) of property located at 24 Mary Street, Woodford, Queensland (the Property).
- [4] In 2023, the plaintiff agreed to sell her interest in the Property to the first defendant for \$160,000.
- [5] Under the contract the plaintiff was to receive:
 - (a) \$145,000 at settlement;
 - (b) \$15,000 within 12 months from the date of settlement.
- [6] Separately the first defendant signed a document acknowledging his indebtedness to the plaintiff in the sum of \$16,000.
- [7] As to the sale, the parties were seemingly content for the second defendants to act for them both and the first defendant arranged things for his mother.
- [8] The first defendant made representations to the plaintiff in that regard which are pleaded by the plaintiff to have been fraudulently made. I will come back to these shortly.

- [9] The plaintiff has obtained documents from the second defendant in relation to the transfer of the plaintiff's interest in the Property which profess to bear her signature but she alleges that she did not sign them and her signature has been forged on the documents.
- [10] Settlement occurred on 4 April 2023. At settlement \$145,000 was advanced by BankWest (a subsidiary of the mortgagee, the Commonwealth Bank of Australia) to the bank account "T & J Johnson, BSB 306821, account number 2391336". The plaintiff affirms that she does not hold, nor has she ever held that account or had access to that account.
- [11] The plaintiff has not been paid the sum of \$145,000 on the settlement date or at all; or the balance (long overdue) of the further \$15,000. Nor has the first defendant paid her the debt of \$16,000 referred to in the Acknowledgement and Undertaking.
- [12] The plaintiff has received nothing in return for transferring her interest in the Property to the first defendant.
- [13] The Claim and Statement of Claim were filed on 19 March 2025.
- [14] In late March or early April 2025, the proceedings were served on the first defendant pursuant to r 110(c) of the UCPR. They have been further served personally on him on 11 December 2025.
- [15] The plaintiff's solicitor, Michael Beirne, has sworn to his dealings with the first defendant. Essentially, Mr Beirne swears that he spoke with the first defendant on various occasions from May 2025 to December 2025 and the first defendant accepted that he had not paid any amount to the plaintiff.
- [16] On 29 April 2026, Mr Beirne emailed the first defendant, attaching a letter written pursuant to r 389(1) of the UCPR. Mr Beirne also caused that letter to be sent by express post to the Property.
- [17] On 3 June 2026, the plaintiff filed this application for default judgment against the first defendant pursuant to r 288. The first defendant has not filed a notice of intention to defend and defence.
- [18] The plaintiff's solicitors have notified the Bank of the orders that she intends to seek.¹ No orders are today sought that affect the bank's rights.

Section 187 of the *Land Title Act 1994*

- [19] Section 187 of the *Land Title Act 1994* (Qld) provides as follows:

"187 Orders by Supreme Court about fraud and competing interests

- (1) If there has been fraud by the registered proprietor or section 185(1)(c), (d), (e), (f) or (g) or (1A) applies, the Supreme Court may make the order it considers just.

¹ Affidavit of Laura Jane Nimmo sworn 18 June 2026.

- (2) Without limiting subsection (1), the Supreme Court may, by order, direct the registrar—
- (a) to cancel or correct the indefeasible title or other particulars in the freehold land register; or
 - (b) to cancel, correct, execute or register an instrument; or
 - (c) to create a new indefeasible title; or
 - (d) to issue a new instrument; or
 - (e) to do anything else.”

[20] The plaintiff has pleaded that there was fraud by the registered proprietor of the Property, namely, the first defendant. In paragraphs 21-23 of the Statement of Claim, the plaintiff pleads that:

- (a) the first defendant represented to her that he would attend to the provision of instructions to the second defendant for the purposes of the retainer generally, and in particular, that the balance of the purchase price would be paid to her on the settlement date (the misrepresentation);
- (b) the misrepresentation was false and made dishonestly with the intention that it should be relied upon by her to complete the contract and transfer her interest in the Property to the first defendant;
- (c) acting on the faith of the misrepresentation and in the belief that it was true, the plaintiff completed the contract and transferred her interest in the Property to the first defendant.

[21] Fraud in s 187 means actual dishonesty or moral turpitude, which can be brought home to the registered proprietor whose title is under attack.²

[22] Consequently, this Court may make an order pursuant to s 187(2) to restore the register to record her interest as it was prior to the transfer to the first defendant (not affecting the registered mortgagee).

[23] The plaintiff submitted that it did not need to establish its entitlement to judgment on the merits because, by reason of his default, the first defendant is taken to have admitted the facts alleged. That would appear to be the practice in this State under r 288: see *Shannon v Simmons* [2020] QSC 115 at [20] (following dicta in *GMW Group Pty Ltd (Receivers and Managers Appointed) (In Liq) v Billingham* [2012] QSC 140 at [25]) which has not been doubted in the succeeding six years. The same practice has been adopted in other States: *MacDonald v Australian Securities and Investments Commission* [2007] NSWCA 304 at [49]; *Embleton Motor Co Pty Ltd v St Kilda Beach Taxi School and Staffing Pty Ltd* [2014] WASCA 183 at [43]. On the other hand, significant decisions point the other way: *My Distributors Pty Ltd v Omaq Pty Ltd* (1992) 36 FCR 578; *Kazal v Thunder Studios Inc (California)* [2023] FCAFC 174; *Sneddon v New South Wales* [2012] NSWCA 351.

² *Unic v Quartermain Holdings Pty Ltd* [2002] 2 Qd R 660, [2001] QSC 403 at [21].

- [24] It is not possible to reconcile each of these decisions. The analogue NSW provision explicitly refers to the admission being deemed to occur unless “in the pleading in response” the defendant traverses the allegation. That has been pointed to as suggesting it only operates where there is that pleading in response and not to an absence of any pleading in response. The Federal Court provision uses language different from both that in NSW and in this State.
- [25] The answer must ultimately lie in the proper construction of the language of r 166 in this State. Our r 166(2) provides that r 166(1) is not to be taken to give rise to an admission “because of a failure to plead by a party who is, or was at the time of the failure to plead, a person under a legal incapacity”. That sub-rule implies that in other situations an admission can arise from a failure to plead. That being the case I agree with the approach taken in this State that a defendant required to do so, but who has not filed and served a defence is taken to admit the facts alleged in the statement of claim.
- [26] The relief as claimed by the plaintiff was that the register be rectified but so as to record the plaintiff and first defendants as tenants in common, not joint tenants. A joint tenancy can be severed in equity by a course of conduct by all joint tenants indicating a commonly-held belief or assumption that their interests are held in undivided shares and without right of survivorship. Here it seems plain enough that both parties intended to end the joint tenancy by the plaintiff selling her interest to the first defendant. But it has not been shown how that severance in equity necessarily affects the registered title. The appropriate order is to direct the registrar of titles to rectify the title to the Property such that the parties hold it as joint tenants in equal shares, but on the basis that their respective entitlement in equity remains to be considered as does the nature of their joint or common tenancy.

Debt Claim for \$16,000

- [27] The plaintiff claims repayment of the \$16,000 acknowledged to be owing in the document signed by the first respondent on 27 February 2023 together with interest thereon. Judgment should be given for that deemed admitted sum.

Costs

- [28] Given the deemed admitted fraud it is appropriate to order that the first defendant pay the plaintiff’s costs of the application and of the proceedings against the first defendant to date on the indemnity basis.