

SUPREME COURT OF QUEENSLAND

CITATION: *Storry v Clout* [2026] QCA 126

PARTIES: **VENETIA LOUISE STORRY**
(applicant)
v
**DAVID LEWIS CLOUT AS TRUSTEE OF THE
BANKRUPT ESTATE OF VENETIA LOUISE STORRY
BY ESTATE NUMBER WA145 OF 2022/3**
(first respondent)
DAVID LEWIS CLOUT
(second respondent)

FILE NO/S: Appeal No 5944 of 2025
SC No 2994 of 2025

DIVISION: Court of Appeal

PROCEEDING: Application for Stay

ORIGINATING COURT: Supreme Court at Brisbane – [2025] QSC 311 (Treston J)

DELIVERED ON: 3 July 2026

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Bond JA, Doyle JA, Kelly J

ORDERS: **1. The application for stay is refused.**
2. The applicant must pay the respondent's costs of the application.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – where the applicant was the executor and trustee of her deceased father's estate – where a sequestration order was made against her and the respondent was appointed as trustee in bankruptcy – where the applicant made multiple failed attempts in the Federal Court to overturn the sequestration order and had ultimately been made the subject of a vexatious litigant order – where the applicant had sought leave from the Federal Court to commence a proceeding again seeking to overturn the sequestration order – where the respondent had succeeded in obtaining a Supreme Court order removing the applicant as executor, appointing an independent administrator and making associated orders – where the applicant's appeal from those orders was dismissed – where the applicant applied for a stay pending the determination of an application to the High Court for special leave to appeal

Crouch and Lyndon (a Firm) v IPG Finance Australia Pty Ltd [2013] QCA 378, applied
J v L & A Services Pty Ltd [1993] 2 Qd R 380; [1993] QCA 89, cited

COUNSEL: The applicant appeared on her own behalf
 D J Topp for the respondent

SOLICITORS: The applicant appeared on her own behalf
 Mitchells Solicitors for the respondent

- [1] **THE COURT:** The applicant's father died on 31 August 2018. His will left the applicant a two-third interest in a property at Toowong, with each of her two sisters given a one-sixth interest in that property.
- [2] Probate in respect of the will was issued to the applicant on about 25 March 2019. On 30 September 2019 the property was transmitted into her name as executor.
- [3] On 18 March 2022, the Federal Circuit and Family Court of Australia made a sequestration order in respect of the applicant's property. The respondent was appointed trustee. The result was that the applicant's beneficial entitlement in her father's estate vested in the respondent as the trustee in bankruptcy.
- [4] The applicant made multiple failed attempts in Federal courts to challenge or stay that sequestration order. Ultimately, on 31 July 2024, the Full Federal Court declared the applicant a vexatious litigant, precluding her from instituting any proceedings in the Federal Court without leave.
- [5] The applicant made one failed attempt to obtain such leave, that application being determined by O'Sullivan J of the Federal Court on the papers on 19 March 2025. In August 2025 the applicant attempted to commence a further similar application in the Federal Court apparently seeking such leave but also seeking to have the sequestration order set aside.
- [6] In July 2025 the respondent commenced proceeding 2994/25 in the Supreme Court of Queensland seeking an order that the grant of probate to the applicant be revoked and that the respondent be appointed in her place. The application was heard by Treston J on 19 August 2025 at which time the applicant's Federal Court application referred to in the preceding paragraph had not yet been determined.¹
- [7] Although resolution of the application before Treston J was deferred for a period of time in case the Federal Court application had any impact, after three months had passed without the Federal Court application being resolved, Treston J determined that the application before the Supreme Court should then be resolved. By judgments published in November and December 2025, Treston J determined that the application should succeed, but that an independent administrator should be appointed.²

¹ Evidence placed before this Court in support of the present application suggests that on 20 March 2026, the applicant applied to the Federal Court for leave to set aside the decision of O'Sullivan J and that application has not yet been determined. It is not clear whether the August 2025 attempt to seek leave and the March 2026 application are related.

² *Clout v Storry* [2025] QSC 311 and *Clout v Storry (No 2)* [2025] QSC 333.

[8] Her Honour's final orders made on 19 December 2025 were as follows:

- “1. The First Respondent, Venetia Louise Storry, be removed as executor and trustee of the estate of John Anthony Storry ('the Deceased').
2. The grant of probate of the will of the Deceased, as ordered on or about 25 March 2019 in matter 1613/19 (the 'Grant'), be revoked.
3. The First Respondent, Venetia Louise Storry, bring the original Grant into the Registry within 7 days of the date of these orders.
4. Pursuant to s 6 of the *Succession Act 1981* (Qld) and r 603(2) of the *Uniform Civil Procedure Rules 1999* (Qld), subject to the formal requirements of the Registrar, Letters of Administration of the will of the deceased the subject of the Grant be granted to Michael Karl Klatt ('the Administrator').
5. Pursuant to s 68 of the *Succession Act 1981* (Qld), s 101 of the *Trusts Act 1993* (Qld) and r 638(5) of the *Uniform Civil Procedure Rules 1999* (Qld), the Court fixes the Administrator's remuneration, with such remuneration for professional and non-professional work to be assessed by an independent costs assessor pursuant to the Supreme Court scale, as varied from time to time on the indemnity basis and at approximately two monthly intervals, and on completion of the administration. All fees assessed are not payable to the Administrator personally, but to the firm of which the Administrator is a Partner.
6. Pursuant to s 6 of the *Succession Act 1981* (Qld), all estate funds, chattels of the deceased, keys for any real property and motor vehicles of the deceased and all other documentation and information relevant to the estate which are in the possession or control of the parties be delivered the Administrator within fourteen (14) days from the date of these orders.
7. Pursuant to s 114 of the *Land Title Act 1994* (Qld), the Administrator be registered as proprietor of any real property belonging to the deceased.
8. Pursuant to s 45(4) of the *Succession Act 1981* (Qld) and ss 82 and 90 of the *Trusts Act 1973* (Qld), all property of the deceased vest in the Administrator and be deemed to have so vested on the date of the deceased's death.
9. Pursuant to s 6 of the *Succession Act 1981* (Qld), the Administrator is at liberty to retain Mullins Lawyers to act on his behalf in respect of the administration of that estate with their professional costs and outlays in so acting to be assessed by an independent cost assessor pursuant to the Supreme Court scale, as varied from time to time, on the indemnity basis and at approximately two monthly intervals, and on completion of the administration.

10. The Administrator be at liberty to apply for directions and orders as he deems in his unfettered discretion fit in relation to the administration of the estate of the deceased upon the giving of three days' notice in writing to the other parties.
11. Pursuant to r 598(4) of the *Uniform Civil Procedure Rules 1999* (Qld), the Administrator be relieved of any obligation to publish any notice of intention to apply for the grant.
12. The applicants' costs of and incidental to this Originating Application be paid from the estate of the deceased on the indemnity basis.
13. There be no costs entitlement of the first respondent to costs in respect of this Originating Application."

[9] By notice of appeal filed 19 December 2025, the applicant commenced appeal 5944 of 2025 in this Court seeking to overturn those orders. On 2 June 2026, this Court ordered that the appeal be dismissed.³ These observations may be made:

- (a) The Court noted that Treston J had correctly identified that the jurisdiction to remove and replace an executor was a supervisory and a protective jurisdiction.
- (b) The Court concluded that Treston J's reasons should not be understood as suggesting that there was some automatic default position requiring the removal of a bankrupt trustee. A relevant consideration was the need for the estate to be administered. A bankrupt executor who is also a beneficiary will be in a position of conflict while on the one hand needing to finalise the estate and on the other wishing perhaps to delay realising assets which would then fall under the control of another for as long as it takes to seek relief from the courts against her bankruptcy, should that be possible.
- (c) The Court rejected the applicant's submission that the respondent as trustee should not be taking any steps as trustee while the applicant had any extant course by which she could challenge the sequestration order, observing:⁴

"There may be circumstances in which it would be prudent and proper for a trustee, including a trustee in bankruptcy, to withhold incurring costs pending a challenge to his or her appointment. It would, however, be to take this too far to say that such restraint in acting or incurring expense should persist over years in the face of the repeated dismissal of challenges to the sequestration order and for so long as some inventive avenue of challenge exist which has not as yet been closed off."

- (d) The Court found that whilst a possibility might exist for the applicant to be successful at some later time in setting aside the sequestration order, there was no error in Treston J's conclusion, having regard to the vexatious litigant order in the Federal Court, that it was "most unlikely that such application carries any prospects of success".
- (e) There was no proper reason to delay replacing the applicant as executor pending the outcome of her present Federal Court proceeding. In particular the

³ *Storry v Clout* [2026] QCA 102. Doyle JA wrote the principal judgment, with Bond JA and Kelly J agreeing with his Honour's reasons.

⁴ *Storry v Clout* [2026] QCA 102 at [23] per Doyle JA with whom Bond JA and Kelly J agreed.

Court rejected the applicant's attempt to suggest that Mullins P had made any orders which supported her argument.

- (f) The Court observed that the need for someone capable of administering the estate to be appointed was actually reinforced by the applicant's argument that there was no one capable of administering the estate given she was bankrupt and the respondent (on her case) should not be acting while she sought to challenge the sequestration order.

[10] The applicant has filed an application in the High Court of Australia for special leave to appeal from the orders made by this Court. Her application identifies as the proposed grounds of appeal the following:

“Denial of Procedural Fairness and Miscarriage of Justice: The Full Court failed to give adequate weight to a matter of great importance that materially changes the outcome pursuant to s 6 of the *Succession Act* 1981 (Qld), prematurely removing the applicant as executor, replaced by an independent administrator who is also unable to pay erroneous amounts to creditors to finalise the estate pursuant to s 60 of the Act;

- (i) Where the petitioning creditor adjourned by consent before President Mullins an uplift of the judgment debt relied upon in the sequestration order to await Federal Court outcome of application pursuant to r 39.05(b) of the Federal Court Rules 2011 to set aside the sequestration order. Where rescind unravels associated judgments.
- (ii) Where delay is erroneously attributed to the applicant instead of the respondent who brought the application to have himself appointed executor, who caused delay and debts to the estate – from May 2022, in breach of s 116(2)(a) of the Bankruptcy Act 1966, discontinuing QCAT reviews for trust account property so the estate could not be finalised pursuant to s 60 of the *Succession Act* 1981 (Qld). Where decision of the respondent's errors that caused the delay currently docketed to a Federal Court judge to be set aside. Where Full Court prematurely and erroneously determined decision in Federal Court jurisdiction.”

[11] On 9 June 2026 the applicant filed an application to this Court seeking:

“Stay of order for CA5944/25 associated orders in SC2994/25 until the determination in the High Court of Australia.”

[12] On 16 June 2026, Bond JA made the following case management directions in relation to the application:

“1. By 4.00 pm on Friday 19 June 2026 the appellant is directed-

- (a) to file and serve a revised outline of written submissions in support of her application for stay which outline is to stand as her sole outline of submissions in respect of that application; and
- (b) to file and serve any further affidavit material on which she seeks to rely.

2. By 4.00 pm on Wednesday 24 June 2026 the respondent is directed to file and serve a revised outline of written submissions in response which outline is to stand as his sole outline of submissions in respect of that application.
3. Neither party needs to exhibit the appeal record as the appeal record will be treated as part of the material upon which the application will be determined.
4. Each outline is to be for no more than 10 pages.
5. The appellant's application for stay is listed to be determined on the papers by a court comprising Bond JA, Doyle JA and Kelly J on Friday 26 June 2026.
6. Costs are reserved."

[13] The Court of Appeal has inherent jurisdiction to stay one of its own orders to allow it to be challenged on an application for special leave to appeal to the High Court.⁵ As Morrison JA explained in *Crouch and Lyndon (a Firm) v IPG Finance Australia Pty Ltd*:⁶

"[2] On such an application the principles to be applied are well established. The court is to follow the approach of Brennan J (as he then was) in *Jennings Construction Ltd v Burgundy Royale Investments Pty Ltd (No 1)*. That requires that exceptional circumstances be shown before a stay is warranted, as the grant of such a stay is an extraordinary jurisdiction. In this Court's exercise of that jurisdiction on this application, the following matters are material to the exercise of discretion:

1. first, whether there is a substantial prospect that special leave to appeal will be granted;
2. secondly, whether a grant of the stay will cause loss to the respondent; and
3. thirdly, where the balance of convenience lies.

[3] Courts have expressed the same thing in a variety of ways, for example, 'the question raised is an arguable one and, more importantly, because unless a stay is extended there will be little or no point in the High Court proceedings'." (footnotes omitted).

[14] There is no merit in the application for stay of the order made by this Court. There is nothing to stay. If a stay was necessary it should have been sought in the first instance in relation to the orders made by Treston J but it was not. The orders made by Treston J have already come into effect. The applicant has been removed as executor and subject to the formal requirements of the Registrar, letters of administration have been ordered to be issued to an independent administrator. The administrator opposes the stay but has advised that he does not intend to appear on the application.

⁵ *J v L & A Services Pty Ltd* [1993] 2 Qd R 380.

⁶ *Crouch and Lyndon (a Firm) v IPG Finance Australia Pty Ltd* [2013] QCA 378 at [2] – [3].

- [15] Of course it is common ground that had the appeal succeeded, this Court could have made orders reversing the position created by Treston J's orders and reinstating the applicant as executor and trustee of her father's estate. The same position would necessarily apply in the event that the applicant was ultimately successful on appeal to the High Court. The High Court undoubtedly would have jurisdiction to reinstate the applicant, just as this Court would have had, in the event that her argument ultimately succeeded.
- [16] More than six months have now passed since Treston J's orders were made. The question is whether it is necessary now to stay any further operation of those orders. This Court has inherent jurisdiction to stay the operation of those orders and in the present circumstances the relevant considerations are the same as those identified by Morrison JA explained in *Crouch and Lyndon (a Firm) v IPG Finance Australia Pty Ltd*. It is appropriate to turn to consider those issues.
- [17] As to whether there is a substantial prospect that special leave to appeal will be granted by the High Court:
- (a) The applicant's argument in the High Court continues the mischaracterisation that she had advanced to this Court of the significance of what happened before Mullins P. Her Honour did not make any relevant order of stay. There was only a consent adjournment before her Honour. The applicant's reliance on events before Mullins P is entirely misplaced.
 - (b) The applicant's argument fails to identify any error of principle made by the Court, or to engage with its reasoning in any coherent way.
 - (c) The applicant has not demonstrated that either of her proposed grounds of appeal has the requisite substantial prospects of success.
- [18] As to whether a grant of the stay will cause loss to the respondent:
- (a) The grant of the stay does not appear likely to cause loss to the respondent or to the administrator.
 - (b) However, the grant of the stay will likely delay further for some period of time both the administration of the estate of the applicant's father and of the applicant's bankruptcy.
- [19] As to the balance of convenience:
- (a) There is limited material before this Court as to the steps which have been taken since Treston J's orders of 19 December 2025 in relation to the appointment of the administrator.
 - (b) The applicant has exhibited emails she has exchanged with the administrator. Those emails suggest that the administrator has not yet requested the registrar for the issue of letters of administration. Further, the administrator has told the applicant that –
 - (i) he will not request the issue of a grant without first giving the applicant 14 days' notice of his intention to do so unless the Court of Appeal dismisses the present application in which case he will request the issue of a grant without notice to her; and
 - (ii) if the Court of Appeal dismisses the application and the applicant applies to the High Court for a stay he would not pursue the grant until that

application was determined, without first giving the applicant 14 days' notice.

- (c) The applicant has expressed concern that compliance with paragraph 6 of the orders made by Treston J would cause her and perhaps her sister some dislocation. But that order required her compliance within 14 days of the date the orders were made. Accordingly, the applicant should already have complied with the order. If she has not complied, that is not a point in favour of her argument.
- (d) Even if one ignores the fact that the applicant should already have complied with the order and assumes that she has not because no one has yet insisted on compliance, it would be for the applicant to prove that someone has now insisted on compliance or on taking other steps pursuant to the order which, if not stayed, will cause prejudice to the applicant or other relevant third parties (in this case the applicant's sister). It would be for the applicant to prove the nature and extent of the risk of prejudice to her or her sister.
- (e) The applicant submits that compliance with the orders of Treston J would result in the eviction, not only of the applicant (being the major beneficiary), but also of one of the other beneficiaries (namely her sister) and that loss of rent being paid by that beneficiary to the other beneficiary and all the outgoings being paid for including the rates and bills.
- (f) The only threat implicit in the email exchange between the applicant and the administrator is that unless this Court or the High Court stays the execution of the orders made by Treston J, the administrator will request the Registrar to issue a grant of letters of administration. One might infer that in due course thereafter the administrator would take appropriate steps towards the proper administration of the estate. Presumably that will eventually include acting in accordance with the inevitable request of the respondent to sell the property and to provide the applicant's share of the proceeds to the respondent so that he may perform his duty as the applicant's trustee in bankruptcy.
- (g) Although this Court has previously drawn the inference that it was likely that the subject property was the applicant's home, or at least that she was making use of it⁷, the applicant has not otherwise identified any evidence supporting her submission that refusal of the stay will lead to her eviction within a time frame which might make a stay necessary. In particular, there is no evidence of the nature of such rights as the applicant or her sister might have to occupy the property, if there are any such rights beyond the rights they have under the will (noting that the rights of the applicant have vested in the respondent).
- (h) Nor is there any evidence as to the administrator's attitude towards enforcement of paragraph 6 of Treston J's orders, or any evidence of any threat by him to evict, or any evidence of the time frame within which he might be intending to take any steps in relation to the realization of the property as part of the steps one might infer that he would take towards the proper administration of the estate.
- (i) The applicant has not established that she is under any threat of eviction or any other form of dislocation either at all or within a timeframe which might

⁷ *Storry v Clout* [2026] QCA 102 at [6].

suggest this Court should intervene to protect the applicant's position (even if the other relevant considerations supported intervention).

- (j) The applicant has not proved that the balance of convenience favours the stay she seeks.

[20] Having regard to the foregoing analysis, the applicant has not put forward a case which favours the exercise of the extraordinary jurisdiction of this Court to grant a stay pending determination of an application to the High Court for special leave to appeal from its decision.

[21] The Court orders as follows:

1. The application for stay is refused.
2. The applicant must pay the respondent's costs of the application.