SUPREME COURT OF QUEENSLAND

CITATION:	*Magno v Henderson* [2026] QSC 182
PARTIES:	**DARREN FRANCIS MAGNO AND LAURA DENISE GILBERT** (plaintiffs) **v** **DYLAN ARRON HENDERSON** (defendant)
FILE NO:	SC No 173 of 2025
DIVISION:	Trial
PROCEEDING:	Claim
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	Ex Tempore 8 May 2026
DELIVERED AT:	Cairns
HEARING DATE:	8 May 2026
JUDGE:	Henry J
ORDER:	

1. Pending the trial of this action or further order, the Defendant be restrained, whether by himself or his servants or agents or otherwise howsoever, from and against any sale, transfer, mortgage, charge or other dealing for or with respect to any of Lot 282 on RP 747616, Title Reference 21374152; Lot 38 on RP 825778, Title Reference 50168729; or Lot 13 on SP 101271, Title Reference 50367431.

2. Todd William Kelly and Benjamin Schierhuber of BDO (NTH QLD), Level 1, 15 Lake Street, Cairns (collectively, the 'Appointees') be jointly and severally appointed as an administrators *de bonis non* of the estate of the late Cheryl Anne Henderson (the 'deceased'), who died on 29 November, 2023, under a limited or special grant of letters of administration for the purpose of procuring the preparation of such tax returns for the deceased, and for and with respect to the estate of the deceased, as remain outstanding, to ascertain the amount of any tax assessed as due and owing and payable out of the estate of the deceased on account of unpaid tax liability assessed against the deceased or the estate of the deceased, and to collect and get in any unrealised real or personal estate of the

deceased and to complete the administration of the estate of the deceased according to law.

3. **The Appointees and their staff be entitled to remuneration out of the estate of the deceased for all such work and attendances reasonably involved or associated with advancement and achievement of the aforesaid purposes of their appointment, included any tax related work, calculated at the rates stipulated in exhibit BS-1 to the affidavit of Benjamin Schierhuber filed herein on 2 April, 2026.**
4. **The costs of and incidental to this application otherwise be reserved.**
5. **Any interested persons have liberty to apply upon two business days written notice.**

CATCHWORDS: SUCCESSION – ADMINISTRATION OF ESTATE – DISTRIBUTION – JURISDICTION AND DISCRETION OF COURT – ASSESSMENT, TAXATION AND RECOVERY – where the plaintiffs and the defendant are the executors and trustees appointed in the deceased's will – where the will prescribed that after payment of the deceased debts and expenses the residue of the deceased estate be distributed to the defendant – prior to the due and proper administration of the deceased estate the defendant acquired real land as part of the estate – where the deceased still had outstanding tax returns – where there is insufficient funds in in the deceased's undistributed estate to meet the cost of preparing and finalising the outstanding tax returns – where negotiations between the plaintiffs and defendant have broken down, and the defendant's solicitors have ceased acting – where the defendant has since failed to cooperate with the plaintiffs to finalise the estate – whether the circumstances justify the Court's intervention to compel the due and orderly administration of the estate

Succession Act 1981 (Qld), s 56(1)
Uniform Civil Procedure Rules 1999 (Qld), r 613

Jones v Matrix Partners Pty Ltd (2018) 260 FCR 310, cited
Inland Revenue Commissioners v Stype Investments (Jersey) Ltd [1982] 3 WLR 228, cited

COUNSEL: M Jonsson KC for plaintiffs

SOLICITORS: Marino Lawyers for plaintiffs
No appearance for the defendant

[1] The plaintiffs and defendant are, jointly, the executors and trustees appointed to administer the last will of the late Cheryl Anne Henderson. By clause 4 of her will, she tasked the plaintiffs and the defendant, as the deceased's executors and trustees,

with payment of all of the deceased's just debts and funeral and testamentary expenses and, thereafter, distribution of the whole of the rest and residue of the deceased estate to the defendant.

[2] It is common ground on the pleadings in the action within which the present application is filed that, contrary to cl 4 of the will and s 56(1) *Succession Act 1981* (Qld), prior to completion of the due and proper administration of the estate of the deceased by transmission applications procured and executed by the defendant as applicant on 8 January 2025 and registered with the Queensland Titles Registry thereafter, the applicant, as devisee, acquired registered ownership of three lots of land that form part of the estate of the deceased, namely Lot 282, Lot 38 and Lot 13 which are described in greater detail in the materials.

[3] The defendant also admits that he procured the plaintiffs' written acknowledgement upon each of the transmission applications just referred to that all of the deceased's just debts and funeral expenses had been paid and testamentary expenses adequately provided for by the defendant's assurance to the plaintiffs that, or to the effect that, "the deceased's tax returns are all up to date".

[4] It is common ground on the pleadings that the deceased nevertheless has outstanding tax returns. Similarly, there is common ground that there are insufficient funds in any as-yet undistributed estate of the deceased available for the plaintiffs and defendant as executors and trustees to meet the cost of preparation and lodgement of 19 outstanding annual tax returns for the deceased, the payment of any tax assessed as owing and any further costs of or incidental to the completion of the administration of the deceased estate. The cost of preparation and lodgement of all outstanding annual tax returns for the deceased, satisfaction of any tax indebtedness and any further costs of the due and proper administration of the estate will thus inevitably need to be met out of the prematurely distributed realty that formed part of the estate of the deceased.

[5] The plaintiffs and the defendant – or at least the defendant's previous lawyer – have been trying to negotiate arrangements under which that might occur. Those negotiations have broken down, and the solicitors initially appointed to represent the defendant in this proceeding have since ceased to act. The defendant himself chose not to appear today.

[6] Despite the assertions in his defence filed on 4 February 2026 that he is "ready, willing and able" to compile and lodge the outstanding tax returns and to "sell a property of his choice" to permit finalisation of the estate, since the termination of his solicitors' retainer he has made no effort to contact the plaintiffs' solicitors to cooperate in the plaintiffs' endeavours to achieve finalisation of the estate.

[7] It is uncontroversial that an indebted trustee has a fiduciary duty to apply trust funds for trust purposes, and that might require clearance of trust indebtedness as a duty which takes precedence over the interests of any individual beneficiary – see, for example, *Jones v Matrix Partners Pty Ltd* (2018) 260 FCR 310 at 325, 328 and 329. In prematurely facilitating and accepting transmission of the estate land prior to preparation and lodgement of outstanding annual tax returns, the defendant has advanced and prioritised his own personal interests as beneficiary over and above his fiduciary obligations as executor and trustee of the estate of his late mother. He is consequently liable to disgorge and wholly replenish the prematurely distributed

assets and to observe and maintain their separation from his own assets pending the continuing administration and finalisation of the estate. He is also liable to wholly indemnify the plaintiffs to the full extent of his interest as sole beneficiary under his late mother's will.

[8] Given the lack of cooperation the defendant has recently shown in the plaintiffs' endeavours to achieve finalisation of the estate and the undoubtedly premature transmission in which the defendant engaged, there are special circumstances justifying the court's intervention to compel the due and orderly administration of the estate – see by analogy of reasoning *Inland Revenue Commissioners v Stype Investments (Jersey) Ltd*; also cited as in *re Clore* [1982] 3 WLR 228 at 242-243.

[9] That can conveniently be achieved pursuant to r 613 *Uniform Civil Procedure Rules* (Qld) by the appointment of Messrs Kelly and Schierhuber as administrators *de bonis non* under a limited or special grant of letters of administration for the purpose of procuring the preparation of such tax returns for the deceased and the estate of the deceased as remain outstanding, to ascertain the amount of any tax assessed as due and owing and payable out of the estate of the deceased on account of unpaid tax liability assessed against the deceased or the estate of the deceased, and to collect and get in any unrealised real or personal estate of the deceased, and to complete the administration of the estate of the deceased according to law.

[10] The proposed appointees consent to such an appointment. Given the defendant's lack of cooperation and the need to preserve assets for purposes associated with the completion of administration of the estate according to law, the defendant should also be restrained by injunction from dealing with prematurely distributed assets. The usual undertaking as to damages in support of the relief sought by the plaintiffs in the immediate application having been given, I propose to so order.

[11] I order as per the amended draft order signed by me and placed with the papers.