

SUPREME COURT OF QUEENSLAND

CITATION: *Bowral Capital Pty Ltd v Real* [2026] QSC 197

PARTIES: **BOWRAL CAPITAL PTY LTD**
ACN 668 962 178
(plaintiff/applicant)
v
ADORA ALAMBRA REAL
(defendant/respondent)

FILE NO: 1669 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 24 August 2026

DELIVERED AT: Brisbane

HEARING DATE: Application on the papers

JUDGE: Davis J

ORDER: **1. Pursuant to r 489(1) of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR), this application is to proceed without an oral hearing.**
2. Pursuant to r 915 of the UCPR, a warrant for possession of the land situated at and known as 11 Hazelwood Close, Mount Sheridan, in the state of Queensland, 4868, being lot 160 on registered plan 890790 with title reference 50066552 be issued.
3. The respondent pay the plaintiff's costs of this Application.

CATCHWORDS: PROCEDURE – UNIFORM CIVIL PROCEDURE RULES – where the plaintiff sought an order for possession of the property – where default judgment was made in favour of the plaintiff – where the plaintiff applied for a warrant for possession of property – where the plaintiff applied for the application to be decided without an oral hearing – where a draft order was served on the defendant – where there was no evidence that there was a lease or tenancy agreement over the land – whether procedure had been complied with – whether the application could be heard without an oral hearing
Uniform Civil Procedure Rules 1999, r 288, r 906, r 913, r 914, r 915, r 916

SOLICITORS: Finance Law for the plaintiff/applicant

Background

- [1] By Claim and Statement of Claim filed 20 April 2026, the plaintiff sought:
1. possession of the whole of the land situated at and known as 11 Hazelwood Close, Mount Sheridan, in the state of Queensland, 4868, being lot 160 on registered plan 890790 with title reference 50066552 (**the Property**);
 2. costs; and
 3. such order or further orders as the Court so determines.
- [2] On 23 January 2025, a loan agreement was entered into between Oak Capital Wholesale Fund Pty Ltd (as lender), Realec Engineering Services Pty Ltd (as borrower) and Ms Real, the defendant, as the guarantor and mortgagor. The agreement was secured by, among other things, a first mortgage registered on title of the Property.
- [3] The defendant, Ms Adora Real, is and was at all material times the sole registered proprietor of the Property.
- [4] The loan amount of \$307,734 was advanced on 31 January 2025 with repayment due within 12 months. Pursuant to cls 14.1 and 14.4 of the loan agreement, the failure of Realec to repay the loan amount within the loan period would give rise to an entitlement of Oak to:
1. take legal action; or,
 2. take possession of and sell the Property.
- [5] The loan was not repaid within 12 months. On 10 February 2026, the plaintiff, Bowral Capital Funding Pty Ltd, as mortgagee, issued notices of default to Realec and the defendant.
- [6] On 28 April 2026, the defendant was personally served with the Claim and Statement of Claim at the address of the Property. The defendant did not repay any amount advanced under the loan agreement, nor file a notice of intention to defend or defence to the Claim.

[7] On 17 June 2026, the plaintiff applied for summary judgment in their favour for the possession of the Property and costs under r 288 of the *Uniform Civil Procedure Rules 1999*. On 17 June 2026, McLeod J made the following orders:

- “1. Pursuant to rule 288 of the Uniform Civil Procedure Rules 1999 (Qld), the plaintiff is granted possession of the whole of the land described as lot 160 on registered plan 890790 in title reference 50066552, being the land situated at and known as 11 Hazelwood Close, Mount Sheridan, QLD 4868.
2. The defendant pay the plaintiffs costs of the proceeding.”

[8] The plaintiff now makes application for an enforcement warrant. By application filed 24 July 2026, it seeks:

- “1. Leave be given to the plaintiff pursuant to r 913 of the Uniform Civil Procedure Rules 1999 (QLD) for the issue of an enforcement warrant to enforce the order for possession of the land located at 11 Hazelwood Close, Mount Sheridan, in the State of Queensland, formally known as lot 160 on registered plan 890790 in title reference 500665522 (**Land**).
2. Pursuant to rule 915 of the *Uniform Civil Procedure Rules 1999* (QLD) a warrant for possession of the Land in the form attached to this Application be issued.
3. In the alternative to order 2, the plaintiff’s application for the issue of an enforcement warrant to enforce the order for possession of the Land be otherwise referred to the Registrar in accordance with r 906(4) of the Uniform Civil Procedure Rules (Qld).
4. The respondent pay the plaintiffs costs of this Application.
5. Such further orders as the Court deems fit.”¹

Should the application be determined without oral hearing

[9] The plaintiff applies for the application to be determined without an oral hearing.

[10] Rule 489 of the UCPR provides for decisions to be made without an oral hearing:

“489 Proposal for decision without oral hearing

- (1) A party making an application, including an application in a proceeding, may propose in the application that it be decided without an oral hearing.
- (2) If the applicant proposes the application be decided without an oral hearing, the court must decide the application without an oral hearing unless—

¹ Reproduced faithfully including typographical and grammatical errors.

- (a) under rule 491, the court considers it inappropriate to do so; or
- (b) under rule 494, the respondent requires an oral hearing; or
- (c) under rule 495, the applicant abandons the request for a decision without an oral hearing; or
- (d) the Chief Justice or Chief Judge suspends the operation of this rule by direction.”

[11] The structure of r 489 is that:

- 1. jurisdiction to proceed without an oral hearing is granted;
- 2. that jurisdiction is enlivened by a proposal by an applicant; and
- 3. the proposal must be accepted by the Court in the absence of any of the circumstances prescribed by r 489(2)(a)-(d).

[12] Here:

- 1. the plaintiff has proposed that the application proceed without oral hearing;
- 2. the only party to the application is the plaintiff who does not require an oral hearing;²
- 3. the plaintiff has not abandoned the request for a decision without an oral hearing;³
- 4. the Chief Justice has not suspended the operation of r 489 by direction.⁴

[13] Consequently, the only question remaining is whether it is inappropriate to proceed without oral hearing.⁵

[14] The principles of law concerning the exercise of discretion to issue a warrant for possession of land to make good an order of the Court for possession are well-established and do not require detailed analysis or argument. The circumstances relevant to the application seem clear, and critical prerequisite considerations are evidenced by documents sworn and filed by the plaintiff. Rule 906 of the UCPR

² Rule 489(2)(b).

³ Rule 489(2)(c).

⁴ Rule 489(2)(d).

⁵ Rule 489(2)(a).

provides that normally the matter proceeds with no formal hearing. In my view, it is appropriate to deal with the application without oral hearing.

The statutory context

[15] Chapter 20 of the UCPR relates to enforcement of non-money orders. Rule 906 in Part 3 provides the procedure for an application for an enforcement warrant:

“906 Procedure

- (1) A person applying for an enforcement warrant to enforce an order must file—
 - (a) an application attaching the warrant the person wants the court to issue; and
 - (b) an affidavit in support of the application stating that the person against whom enforcement is sought was served with the order and that there has not been compliance with the order.
- (2) A person entitled to enforce a non-money order may apply for an enforcement warrant without notice to another party.
- (3) A copy of the enforcement warrant must be filed.
- (4) Unless the court or a registrar directs otherwise, an application for an enforcement warrant or an application for renewal of an enforcement warrant must be dealt with by the registrar without a formal hearing.”

[16] Part 4 of Chapter 20 relates specifically to “Enforcement warrants for possession” and provides:

“913 Prerequisites to enforcement warrant for possession

- (1) Unless the court otherwise orders, an order for the possession of land may be enforced by an enforcement warrant under rule 915 only if the person against whom the order is to be enforced is served with a copy of the order at least 7 days before the warrant is issued.
- (2) If a person other than the person against whom the order is made is in occupation of land under a lease or tenancy agreement, an enforcement warrant under rule 915 may be issued only if the court gives leave.

914 Procedure

- (1) A person applying for an enforcement warrant under rule 915 must file—
 - (a) an affidavit by the person stating whether to the best of the person’s knowledge a person other than the person liable

under the order is in occupation of the land under a lease or tenancy agreement; and

- (b) an affidavit about compliance with rule 913.
- (2) An affidavit may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.
- (3) The affidavit mentioned in subrule (1)(a) must be made not earlier than 2 business days before the date of the application.

915 Enforcement warrant for possession

A court may issue an enforcement warrant in the approved form authorising an enforcement officer to enter on the land described in the warrant and deliver possession of the land and appurtenances to the person entitled to possession.

Consideration

[17] The prerequisites to the issue of an enforcement warrant are therefore that:

- 1. the person against whom the order for possession was made is served with a copy of that order at least 7 days before the warrant is issued;⁶
- 2. no person is in occupation of the land the subject of the enforcement order under a lease or tenancy agreement.⁷

[18] On 24 July 2026, with the Application, the plaintiff filed two affidavits: one of Oliver Small, solicitor on record for the plaintiff, and an Affidavit of Service of Scott Jon Shaw.⁸

[19] Their evidence is that:

- 1. the defendant was personally served with a copy of the 17 June 2026 orders of McLeod J on 30 June 2026 at the Property, some 24 days before the Application was filed;⁹
- 2. they are not aware of and verily believe that there is no lease or tenancy agreement over the Property;¹⁰ and,

⁶ Rule 913(1).

⁷ Rule 913(2).

⁸ Rule 914.

⁹ In satisfaction of r 913(1).

¹⁰ In satisfaction of r 913(2).

3. to the best of their knowledge, no other person other than the defendant is in occupation of the land under a lease or tenancy agreement.¹¹

[20] Given there is no person other than the defendant in occupation of the Property under a lease or tenancy agreement, leave is not required.

[21] The prerequisites for an order under r 915 are therefore satisfied.

[22] The application seeks leave to issue the warrant and the Registrar has no jurisdiction to grant leave. However, as leave is not required here under r 913(2), this matter could have been dealt with by the Registrar.

[23] The orders are:

1. Pursuant to r 489(1) of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), this application is to proceed without an oral hearing.
2. Pursuant to r 915 of UCPR, a warrant for possession of the land situated at and known as 11 Hazelwood Close, Mount Sheridan, in the state of Queensland, 4868, being lot 160 on registered plan 890790 with title reference 50066552 be issued.
3. The respondent pay the plaintiff's costs of this Application.

¹¹ In satisfaction of r 913(2).