

SUPREME COURT OF QUEENSLAND

CITATION: *Stanton v Myrteza* [2026] QSC 249

PARTIES: **EUGENIE STANTON**
(applicant)
v
**BURIM MYRTEZA AS ADMINISTRATOR OF THE
ESTATE OF PELLUMP MYRTEZA DECEASED AND
AS ADMINISTRATOR OF THE ESTATE OF GJYLTAN
MYRTEZA DECEASED**
(respondent)

FILE NO/S: 3647/26

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 15 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 1 and 8 October 2026

JUDGE: Smith J

ORDER: **1. Pursuant to s 6 of the *Succession Act 1981* (Qld):**

(a) Burim Myrteza be removed as administrator of the estate of Pellump Myrteza deceased;

(b) Burim Myrteza be removed as administrator of the estate of Gjyltan Myrteza deceased;

2. The Grant of Letters of Administration on intestacy issued to Burim Myrteza as administrator of the estate of Pellump Myrteza on 23 February 2024 be revoked and the Grant of Letters of Administration be delivered to the Registry within seven (7) days of the date of these Orders; and

3. The Grant of Letters of Administration on intestacy issued to Burim Myrteza as administrator of Gjyltan Myrteza on 24 October 2024 be revoked and the Grant of Letters of Administration be delivered to the Registry within seven (7) days of the date of these Orders.

4. As to the estate of Pellump Myrteza:

- (a) pursuant to s 6 of the *Succession Act 1981* (Qld) and r 610(1)(j) of the *Uniform Civil Procedure Rules 1999* (Qld), Kent William Dalziel be appointed as administrator of the estate and subject to the formal requirements of the registrar, Letters of Administration on intestacy be granted to Kent William Dalziel;
 - (b) pursuant to s 45(4) of the *Succession Act 1981* (Qld), all property of the deceased, Pellump Myrteza, vest in Kent William Dalziel as administrator and be deemed to have so vested on the date of Pellump Myrteza's death;
 - (c) pursuant to s 114 of the *Land Title Act 1994* (Qld) Kent William Dalziel as the Administrator be registered as proprietor of all real property of Pellump Myrteza; and
 - (d) Burim Myrteza deliver all documents in his possession relevant to issues remaining outstanding in the estate to Kent William Dalziel (care of The Estate Lawyers, 22/69 Ann Street, Brisbane) within fourteen (14) days of the date of these Orders.
5. As to the estate of Gjyltan Myrteza:
- (a) pursuant to s 6 of the *Succession Act 1981* (Qld) and rule 610(1)(j) of the *Uniform Civil Procedure Rules 1999* (Qld) Kent William Dalziel be appointed as administrator of the estate and subject to the formal requirements of the registrar, Letters of Administration on intestacy be granted to Kent William Dalziel;
 - (b) pursuant to s 45(4) of the *Succession Act 1981* (Qld), all property of the deceased, Gjyltan Myrteza, vest in Kent William Dalziel as administrator and be deemed to have so vested on the date of Gjyltan Myrteza's death;
 - (c) pursuant to s 114 of the *Land Title Act 1994* (Qld) Kent William Dalziel as the Administrator be registered as proprietor of all real property of Gjyltan Myrteza; and
 - (d) Burim Myrteza deliver all documents in his possession relevant to issues remaining outstanding in the estate to Kent William Dalziel (care of The Estate Lawyers, 22/69 Ann Street, Brisbane) within fourteen (14) days of the date of these Orders.

6. Pursuant to s 68 of the *Succession Act 1981* (Qld), Kent William Dalziel is authorised to be remunerated for undertaking legal and other work in the capacity as administrator in both estates in accordance with the Supreme Court scale of costs, as varied from time to time, on the indemnity basis, with such remuneration to be assessed by an independent costs assessor at approximately two (2) monthly intervals and on completion of the administration.
7. Kent William Dalziel is authorised to retain his firm, The Estate Lawyers (or any other firm), to act on his behalf as administrator of the estates 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 those fees are to be assessed on completion of his administration.

8. I will hear the parties on the question of costs.

CATCHWORDS: SUCCESSION – PERSONAL REPRESENTATIVES – APPLICATION TO REMOVE ADMINISTRATOR IN AN INTESTACY – where the respondent is the administrator in two estates – where the first deceased died in November 2021 and the second deceased died in June 2023 – where the respondent is in a position of conflict as to his personal interest in the estate – where the land may have been sold at an undervalue to a colleague of a respondent – where it is appropriate in the circumstances to appoint an independent administrator

Land Title Act 1994 (Qld) s 114, s 184

Succession Act 1981 (Qld) s 6, s 45, s 68

Uniform Civil Procedure Rules 1999 (Qld) r 610

Baldwin v Greenland [2006] QCA 293; [2007] 1 Qd R 117, cited

Coope v LCM Litigation Fund Pty Ltd [2016] NSWCA 37; (2016) 333 ALR 524, applied

Re Estate of Crane [2005] SASC 379; (2005) 93 SASR 198, cited

Re Franks [2021] QSC 134, cited

Renton v Dresselhaus and Ors [2026] QSC 95, considered

COUNSEL: A Harding for the applicant
Self-represented respondent

SOLICITORS: Cockburn Legal for the applicant
Self-represented respondent

INTRODUCTION

- [1] This is an application by the applicant, Eugenie Stanton, for an order pursuant to s 6 of the *Succession Act 1981* (Qld) that the respondent be removed as administrator of the estates of Pellump Myrteza and Gjyltan Myrteza both of whom are deceased.
- [2] The applicant also seeks an order that an independent administrator, Kent Dalziel, be granted letters of administration with respect to each estate together with relevant consequential orders.
- [3] For the reasons which follow, orders are made in favour of the applicant.

BACKGROUND

- [4] The applicant and the respondent are the two children of Pellump and Gjyltan. Gjyltan died on 14 November 2021 and Pellump died on 27 June 2023. Neither had a will. In 2024 the respondent was appointed administrator of the estates.
- [5] The major asset of the estate is land situated at 169 Brookbent Road, Pallara in Queensland.
- [6] There are three leases over part of the property. The lessee is Amplitel Pty Ltd which is part of the Telstra group of companies. The lessor of each of the leases is Burim Myrteza as personal representative under instrument 7239166409. The annual rent payable under the leases is \$24,000 per annum exclusive of GST subject to a three per cent annual escalation payable yearly in advance from the commencement date of 1 August 2025.
- [7] Despite the fact that the land was owned by the deceased and the respondent is nominated in the leases to be the personal representative, the respondent asserts that he is the true lessor of each of the leases in his personal capacity and he is treating the leases including the rent being paid under them as his own assets and not assets of the estate.
- [8] The evidence reveals that \$131,439.70 was paid to the respondent pursuant to one of the leases. The respondent asserts, despite the registration of the lease, that he is personally entitled to this sum. He has appropriated this sum to himself.
- [9] Evidence from a real estate agent engaged by the applicant values the land at \$6,000,000 to \$6,500,000. However, the respondent as personal representative of the estate has entered into a contract of sale, dated 2 May 2026, with respect to the property. The purchaser is Vista Property and Development Pty Ltd (**Vista**). The sale price is \$1,700,000. The contract is stated to exclude the benefit of the leases. The contract asserts the respondent holds the leases in his personal capacity and personally is entitled to receive the rent.
- [10] Manuel-Antonio Herrera is the director and secretary of Vista. He and the respondent were directors of Rialto Real Estate Agents Pty Ltd in 2006.
- [11] The applicant in her affidavit confirms that the respondent and Mr Herrera used to work together at Rialto Real Estate. She also says that she was not consulted as to the

contract of sale. She believes the property is being sold at an undervalue in a non-arms-length transaction.

[12] Further, despite the fact that both of the deceased died some time ago, there are still significant outstanding debts of the estate as follows:

- (a) Rates \$14,596.23
- (b) Aged Care fees for Pellump \$79,037.97
- (c) Urban utilities \$9,301.73

[13] Despite correspondence between the parties, the estates have not been finalised. A summary follows.

- (a) On 16 December 2024, AW Bale & Son advised the respondent that the applicant was entitled to 50 per cent of the estate and he should not transfer the land to himself. Further they noted that a woman had called them purporting to be the applicant and renouncing her interest in the estate. The woman refused to provide identification or sufficient contact details. He was also told that they had received correspondence from the applicant stating she was obtaining legal representation.
- (b) On 10 January 2025, Fox & Thomas acting on behalf of the applicant requested the respondent through his lawyers to provide full details of the assets of the estate and details of any dealings with the property.
- (c) On 21 February 2025, Romans and Romans acting for the respondent claimed they were trying to finalise the debts of the estate.
- (d) On 21 February 2025, Fox & Thomas asked Romans and Romans as to whether they had instructions from the respondent.
- (e) In June 2025, Fox & Thomas noted that the applicant was concerned the respondent was preferring his own interests in occupying the property to his fiduciary obligations as administrator.
- (f) In June 2025, Romans and Romans advised that they had not heard from the respondent and there were discussions about a change of lawyers. He owed them \$5,000.
- (g) On 28 October 2025, Infin8 Care sent a letter of demand to the respondent that the estate pay \$75,095.23. This is still unpaid.
- (h) In December 2025, Fox & Thomas wrote to Romans and Romans seeing whether they still held instructions. There was no reply.
- (i) On 16 March 2026, Fox & Thomas wrote to Romans and Romans seeking that the estate be finalised and threatening a court application.
- (j) On 27 March 2026, Romans and Romans replied stating they had no instructions.
- (k) On 14 April 2026, Cockburn Legal for the applicant wrote to the respondent noting he had fiduciary obligations and requesting a copy of any contract of sale for the land. He was placed on notice that the applicant intended to apply to the Supreme Court for the appointment of an independent administrator.

- (l) On 19 April 2026, the respondent replied stating the applicant had repudiated the family and alleged the applicant had made no attempts to participate in the administration of the estate. He alleged numerous attempts had been made to sell the property. He alleged that the house on the property was damaged during a home invasion. He admitted that a contract of sale was signed recently. I note he made no mention of the leases which he now alleges are his. I also note the contract is in fact dated 2 May 2026.
- (m) On 28 April 2026, Cockburn Legal asked for details of the lawyer acting in the conveyance.
- (n) On 28 April 2026, he replied saying he was self-represented. He alleged the sole reason the matter had not resolved was the applicant's conduct. He offered to buy the applicant's share of the estate, although no amount was offered.
- (o) On 29 April 2026, Cockburn Legal asked for a copy of the contract of sale and details of the conditions and the purchase price.
- (p) On 9 May 2026, the respondent avoided providing a copy of the contract instead making allegations that the applicant did not want to engage in a mediation and asking her to remove a caveat.
- (q) On 12 May 2026, Cockburn Legal rejected assertions made by the respondent and accepted the concept of a mediation but again asked for a copy of the contract of sale. There was an agreement to withdraw the caveat. A list of the assets of the estate, liabilities of the estate, monies spent and receipts and invoices were requested.
- (r) On 14 May 2026, the respondent refused to accept that the applicant's conduct was not relevant. He agreed to a mediation. Again, he did not provide a copy of the contract of sale. He alleged he would provide a list of assets. He alleged that it would cost \$500,000 to repair the dwelling and \$250,000 to remediate the land and said this should be shared by both beneficiaries. He said the contract price was \$1,700,000. He alleged that any loss because of non-occupation was due to the applicant. He offered 50 per cent of \$1,700,000 less the \$750,000. If she did not accept, he would commence proceedings against her claiming the full loss.
- (s) On 21 May 2026, Cockburn Legal responded, again asking for a copy of the contract. They pointed out that the applicant was not responsible for the costs of repair and remediation. It said that it was the respondent's role as administrator to sell the property. The applicant's letters had gone unanswered for over a year. The applicant was concerned that there was a large rates bill. She was also concerned that a bank account had been opened to hold \$131,439.70 in lease payments.
- (t) On 27 May 2026, the respondent replied. He rejected much which had been stated. He said there had been no liquid funds in the estate. He alleged that the Amplitel lease payment was his personally. He alleged the rates arrears were the fault of his previous lawyers. He demanded that the applicant immediately contribute 50 per cent towards the liabilities.
- (u) On 28 May 2026, Cockburn Legal responded stating that the lease expired in July 2022 and requesting copies of the leases and agreements after that date.

- (v) On 28 May 2026, the respondent provided some old leases from 2003. He alleged that the 2025 leases were granted by him in his personal capacity and they were a direct continuation of the old leases. I find this to be misleading. The truth is the respondent executed them in his capacity as administrator.
 - (w) On 29 May 2026, the respondent provided some old lease documents from 2012.
 - (x) On 29 May 2026, Cockburn Legal requested the lease documents again.
 - (y) On 29 May 2026, the respondent claimed that his solicitors failed to carry out his instructions regarding the leases and instead they were in his name, as personal representative.
 - (z) On 1 June 2026, Cockburn Legal wrote noting there was a dispute as to who was the rightful owner of the leases and requesting consent for the appointment of an independent administrator and to reimburse monies paid to him under the leases. It noted there was a clear conflict of interest.
 - (aa) On 1 June 2026, the respondent replied alleging that the leases after 2022 were in his name and again raising the issue of the liabilities.
 - (bb) On 2 June 2026, Cockburn Legal wrote to the respondent maintaining the respondent had a clear conflict of interest.
 - (cc) On 3 June 2026, the respondent disputed this. He threatened that the applicant had to immediately confirm that the leases were his and he was entitled to the income or he would issue proceedings in the Supreme Court.
- [14] Ms Aitchison in her affidavit says that:
- (a) Despite internet searches she is unable to locate any evidence of previous listings of the property on the open market.
 - (b) A copy of the contract of sale was not provided by the respondent until 28 May 2026.

Respondent's evidence

- [15] The respondent in his affidavit refers to the history of the property. It was 70,000 square metres. It had been the family home for 50 years.
- [16] He said that in 2014, the BCC compulsorily resumed about 40,000 square metres at a cost of \$423,000. This was the most valuable parcel. There is a risk of further resumption. The balance was rezoned which has significantly reduced its value. There are also other planning constraints which reduce the pool of potential buyers.
- [17] The property is also subject to flooding from Oxley Creek. He alleges the value of the land is \$127,000 to \$200,000.
- [18] He alleges the land is contaminated by dumping and the remediation cost is about \$250,000. Also, the dwelling was damaged in a criminal incident. To restore the dwelling would cost about \$500,000.
- [19] The contract of sale is subject to a pipeline easement and the three Amplitel leases and other notices and charges which also reduces the value.

- [20] He alleges that the sale price of \$1,700,000 is the best price that can be achieved.
- [21] He explains that the Amplitel leases are excluded from the contract of sale and are his personally.
- [22] He disputes the Ray White valuation and says that this was a mere desktop appraisal with improper consideration of residential sales. It makes no reference to the O2 zoning and the encumbrances on the land.
- [23] He explains how the contract came about and says that all contact with Mr Herrera ceased in 2005. He has no financial interests with him. After failing to find a buyer on the open market he reached out to Mr Herrera. The price of \$1,700,000 is a realistic value. He has attached a valuation estimate referring to a value of \$1,220,000.
- [24] As to Mr Dalziel, his appointment would be a retrograde step and would damage the estate. He also says that the applicant has rejected reasonable attempts to resolve this matter.
- [25] The respondent in an affidavit dated 6 October 2026 repeats much of which a lot of what was in his previous affidavit. He disputes that s 184 of the *Land Title Act 1994* (Qld) is relevant to whether or not he is lessor in his personal capacity of the Amplitel leases.
- [26] He says that his beneficial entitlement to the lease income does not derive from the leases, but it derives from the chain of contractual instruments which had been in continuous operation since 2003. He was personally entitled to the rent. He claims that he executed the leases in his capacity as administrator in 2025 as he wanted to protect his fiduciary position as administrator.
- [27] He also seeks to apply for an order that the Amplitel leases be re-executed in his personal capacity as lessee or alternatively a declaration in his favour concerning the leases. He gives evidence as to the head leases from his parents to himself. These were in his personal capacity.
- [28] In 2003 his parents executed a deed of consent to sublease the premises. He then subleased from himself to Telstra. The unbroken arrangement has been in place since 2003. The new leases are a continuation of the series of the existing leases.
- [29] With respect to the sale price of the property, he says that he has held a Queensland real estate agent's licence for a number of years. It is his opinion that the evidence of value is insufficient. He repeats his allegations of the resumption by the Brisbane City Council of 40,000 square meters of the property in 2014 and as to the zoning of the property. He also again refers to the RP data valuation as being \$1.21 million dollars.
- [30] He also says that the Vista contract is at arm's length. He had no contact with Mr Herrera from 2006 until 2026. He is to receive no personal benefit from the Vista contract. The Vista contract specifically excludes the leases from the sale.
- [31] He alleges the administration of the estates has faced a series of extraordinary circumstances. He alleges that mother's death was a suspected homicide. He says the deceased had multiple names. He alleges the applicant has refused to communicate with him. He was also the subject of a home invasion. He alleges that the applicant

contacted A W Bale & Son in 2024 stating she did not wish to receive any inheritance from the estate.

- [32] He also alleges (for the first time) that the parents consistently told him that all of the property belonged to him and would pass to him on their deaths. This is consistent with Albanian customary law. These statements were made repeatedly over a period of decades. He alleges in 2000, his sister separated from Mr Isai. At a meeting the father said the property was the respondent's and Ms Stanton would receive nothing. Ms Stanton did not challenge or dispute what was said at the meeting.
- [33] The lease structure was a legal implementation of the succession arrangement. He says that in 2005 he set up Rialto Real Estate which was a successful business. However, he made the decision to dissolve Rialto entirely when his wife left him, and he dedicated himself to the care of his parents. He did this because of the promises concerning the property and the lease income.
- [34] He says that he invested substantially all of the lease income into the maintenance of the household and costs for the care of the deceased. He also paid for his father's gambling debts. He refers to the death of his mother on 14 November 2021. He also refers to the home invasion and the house being semi-destroyed and becoming uninhabitable.
- [35] He alleges that the applicant chose to remain away from the family from 2006. She did not communicate with the parents for more than 20 years.
- [36] He alleges the doctrine of proprietary estoppel applies. In the circumstances the orders should not be made by the court.

Conclusions on the evidence

- [37] I do not make any final conclusions as to the matters in dispute. These are matters which may need to be determined at any trial.
- [38] At this stage, my conclusions on all of the evidence are:
 - (a) It was the respondent who has delayed this matter, not the applicant. It was the respondent who delayed for over a year in responding to the applicant's lawyers.
 - (b) The respondent tried to withhold relevant documents until pressed.
 - (c) The respondent has failed to take reasonable steps to sell the property to pay out the liabilities.
 - (d) The respondent misled Cockburn Legal as to whose name the lease was in initially.
 - (e) As regards the valuation evidence, whilst it is true the agent is not a registered valuer, she is independent, unlike the respondent. She also has experience with sales in the area. There is a reasonable possibility the land is worth about \$6,000,000.
 - (f) There are unanswered questions as to why the respondent approached Mr Herrera to buy the land and how the price was agreed upon. Also, it is

suspicious that the contract was signed on 2 May 2026 at a time when the applicant was trying to find out what was happening with the estate.

- (g) There is no objective evidence to prove the respondent's assertions he has tried to sell the property on the open market since the deaths. The material attached to his affidavit shows that the advertisements concerning the property pre-dated the deaths.
- (h) The respondent has a lack of insight into the existence of the conflicts I have referred to.
- (i) The respondent has made quite unreasonable demands as against the applicant in this matter e.g. requiring her to contribute to the restoration costs.
- (j) I have doubts that the person who contacted A W Bale & Son in 2024 was in fact the applicant. The woman they spoke to refused to provide her identification to prove that she was the applicant.
- (k) In any event A W Bale & Son was told that the applicant was seeking legal representation.
- (l) The respondent is in a clear position of conflict with regard to the leases; to the sale of the property at a potential significant undervalue to a colleague and with regard to his allegations that he is entitled to all of the estate.

SUBMISSIONS

Applicant

- [39] The basis of the applicant's application is that the respondent should be removed as administrator as there are at least four matters in respect of which the respondent has an actual conflict of interest, namely:
 - (a) His claim to be the proper lessor under the leases which is made by him despite the legal position under s 184 of the *Land Title Act 1994* (Qld) and his claim that he is entitled to the sum of \$131,439.70.
 - (b) Concerns that the contract of sale is not a truly arm's length transaction between independent parties and the property is being sold significantly below market value i.e. \$1,700,000 compared to \$6,000,000 to \$6,500,000.
 - (c) The respondent has delayed the administration of the estates, has failed to pay the debts of the estates and has failed to communicate in a timely and proper manner with the applicant or her solicitors.
 - (d) The respondent now claims entire ownership of the property and intends to issue proceedings to validate this.
- [40] The applicant submits that many of the debts have been outstanding for a considerable time. The respondent has failed to pay them.
- [41] There will be considerable benefit by the appointment of an independent administrator.

Respondent

- [42] The respondent submits that there is no conflict of interest. He submits that there is a 20-year history of his being the true lessor to the telecommunications company. He says there was a parental deed of consent to sub-lease. The respondent has always been the owner of the leases to the Telco and never the estate. Therefore, the allegation of misappropriation is entirely incorrect. He submits that with respect to the leases, the registration cannot determine who is beneficially entitled to the income. He refers to agreements with the parents as early as 2003. Therefore, the applicant's reliance on an allegation that \$131,439.70 was payable to the personal representative is mistaken.
- [43] The reason the leases were executed in the name of the estate was this avoided a perceived conflict of interest. I do not accept that submission. Indeed, it is contrary to an earlier allegation that it was an error by his lawyers.
- [44] With respect to the allegation of a sale below market value, the respondent submits that the valuation evidence presented by the applicant is a real estate appraisal by an agent who is unfamiliar with the property, its zoning and the specific constraints. The price in the contract is a fair value bearing in mind the property was listed for sale since 2016 and a listing at \$6,000,000 produced no offer.
- [45] The respondent submits that the \$1,700,000 price is consistent with the property's true open market value. It was the product of genuine commercial negotiation and represents the best achievable outcome in the current market. It expressly carves out the leases which are not the subject of the sale.
- [46] The respondent denies that he has delayed or failed to communicate with the applicant.
- [47] It is also submitted that Kent Dalziel is not independent, and his appointment may strip the respondent of his entitlement to the rental income.
- [48] It is also submitted that the applicant does not need any money, and she was estranged from her parents for about 20 years. The respondent was a sole carer for decades after suffering an injury.
- [49] With respect to the allegation that debts of the estate have not been satisfied, the care fees of \$79,037.97 are in dispute and not much will have to be paid. The applicant has not paid her share of these. It is also submitted that the applicant has overlooked the possibility that both of the deceased made a will, and he provides details about that in paragraph 28.
- [50] He also submits there is no duty to sell the property.
- [51] He opposes the orders sought by the applicant and seeks various directions referred to in his submissions.
- [52] In conclusion, the application should be dismissed or alternatively stayed, pending the determination of the ownership question.

DISCUSSION

[53] The Court has an inherent power and power pursuant to statute to remove an administrator. It has been said that the jurisdiction is both supervisory and protective.¹

[54] Section 6(1) of the *Succession Act* provides:

“6 Jurisdiction

(1) Subject to this Act, the court has jurisdiction in every respect as may be convenient to grant and revoke probate of the will or letters of administration of the estate of any deceased person, to hear and determine all testamentary matters and to hear and determine all matters relating to the estate and the administration of the estate of any deceased person; and has jurisdiction to make all such declarations and to make and enforce all such orders as may be necessary or convenient in every such respect.”

[55] In *Renton v Dresselhaus and Ors*² Williams J noted the following:

1. The starting point is that the choice of the executor is that of the testator, which is honoured, unless there is good reason as to why the chosen executor should not continue.
2. Misconduct by an executor will often justify removal but this is not a prerequisite to the exercise of jurisdiction.
3. A conflict of interest between the executor and the other interested party is a relevant consideration, but the existence of a conflict may not be determinative. The relevant question is the extent of the conflict and its likely effect on the administration of the estate.
4. Delay in the administration of the estate or a relationship breakdown between trustees and beneficiaries may warrant removal.
5. The jurisdiction to remove a trustee must be exercised taking into account the interests of the beneficiaries, the security of the trust property and the efficient, faithful and satisfactory execution of the trust and power conferred on the trustees.
6. The trustee’s choice as executor is to be given due weight but does not limit the jurisdiction.
7. The ultimate concern is with the due and proper administration of the estate in the interests of the beneficiaries.
8. In accordance with these principles, the court is to consider whether it is in the interests of the due and proper administration of the estate in the interests of the beneficiaries to remove the executors and appoint an independent administrator.

¹ *Baldwin v Greenland* [2006] QCA 293; [2007] 1 Qd R 117 at [44].

² [2026] QSC 95 at [26]-[27].

- [56] It is true that just because there is a potential conflict of interest does not necessarily justify the exercise of the jurisdiction³ and each case must depend on its own facts.⁴
- [57] A conflict arises if there is a real and sensible possibility that the personal interests of the fiduciary divide the loyalty of the fiduciary with the result that he or she cannot properly discharge their duties to the beneficiary.⁵
- [58] The test for the existence of a conflict is objective and must be determined from the standpoint of the objective observer with knowledge of all the relevant facts and circumstances.⁶
- [59] By way of example Jackson J in *Re Franks*⁷ noted:
- “In the face of the conflict to date and the differing personal interests that appear to have affected the conduct of the applicant and the respondent and the absence of any likely agreement as to funding of the expenses of the estate, including the defence of David Franks’ application for further provision from the estate, there is likely to be benefit in an independent administrator who will not need the agreement for joint action and who will not be compromised by conflicts of interest or personal interest.”
- [60] In this particular case, I consider the respondent has significant actual conflicts of interest concerning the substantial asset of the estate. When I read the correspondence by him there is a strong risk of biased judgement. His approach is to reject outright, even the proposition that he has a conflict of interest and to reject that the applicant has arguable claims.
- [61] First, the estates have significant debts as follows:
- (a) Outstanding rates owed to the BCC, \$14,596.23
 - (b) Infin8 Care residential fees for Pellump of \$79,037.97
 - (c) Outstanding urban utilities charges of \$9,301.73
 - (d) Funeral costs and legal fees, the sum of which is unknown.
- [62] On the evidence many of these debts have been outstanding for a considerable time and no doubt will attract interest. Despite the respondent’s obligation as administrator to pay these debts, he has failed to do so.
- [63] Second, I have considerable concerns as to the respondent’s position relating to the leases. It is difficult to accept the respondent’s explanation as to why the leases were signed in the name of the estate. It seems to me there is a real argument that the leases and the income associated with them, are the property of the estate and the monies paid pursuant to the leases are estate property. If that is the case, then there is an arguable case by the applicant that \$131,439.70 was taken by the respondent for his own use.

³ *Re Estate of Crane* [2005] SASC 379 at [30]; (2005) 93 SASR 198.

⁴ *Re Franks* [2021] QSC 134 at [47].

⁵ *Coope v LCM Litigation fund Pty Ltd* [2016] NSWCA 37; (2016) 333 ALR 524 at [105] – [109].

⁶ *Coope v LCM Litigation fund Pty Ltd* [2016] NSWCA 37; (2016) 333 ALR 524 at [105] – [109].

⁷ [2021] QSC 134 at [48].

- [64] The validity of the respondent's argument remains to be seen, but his position concerning the leases puts him in a real position of conflict between his personal interests and his acting as administrator of the estate.
- [65] Third, real concerns have been raised as to the sale of the property. The applicant has put in evidence that the property is worth between \$6,000,000 and \$6,500,000. The property is being sold at \$1,700,000 to a company the director of which has had a relationship with the respondent. It is also being sold with the leases "carved out" from the sale. There are real concerns as to the validity of this sale and with the lease carve out. Again the conflict-of-interest situation looms large.
- [66] Fourth, the most recent affidavit from the respondent heightens the degree of conflict. He now alleges that the applicant has renounced her interest; that the applicant is not entitled to any interest at all and that there is proprietary estoppel. He intends to bring proceedings seeking orders to this effect. This position is inconsistent with his position of administrator.
- [67] Fifth, there is also the delay to be considered. In late 2024 or early 2025 the respondent engaged lawyers to act on his behalf, but he made no contact with his own lawyers for over a year. Over that time, he failed to communicate with the applicant or her solicitors in relation to matters affecting the applicant's interests as beneficiary.
- [68] The respondent only engaged with the applicant's present lawyers in April 2026 when they wrote to him advising of the intention to apply to remove him as administrator. It was when the respondent began to communicate, the applicant became aware of the respondent's conflicts of interest.
- [69] It is concluded that it is inappropriate for the respondent to remain as administrator of the estates.
- [70] The material supports the contention that Kent Dalziel is an appropriate person to be appointed as administrator. He is a solicitor of the Supreme Court and has considerable experience in succession law. He has consented to the appointment.
- [71] In the exercise of the court's discretion, I have determined to remove the respondent as administrator of the estates. The consequential orders are entirely appropriate also given the issues which have arisen.

ORDERS

- [72] For the reasons given, the following orders are made:
1. Pursuant to section 6 of the *Succession Act* 1981 (Qld):
 - (a) Burim Myrteza be removed as administrator of the estate of Pellump Myrteza deceased;
 - (b) Burim Myrteza be removed as administrator of the estate of Gjyltan Myrteza deceased;
 2. The Grant of Letters of Administration on intestacy issued to Burim Myrteza as administrator of the estate of Pellump Myrteza on 23 February 2024 be revoked and the Grant of Letters of Administration be delivered to the Registry within seven (7) days of the date of these Orders; and

3. The Grant of Letters of Administration on intestacy issued to Burim Myrteza as administrator of Gjyltan Myrteza on 24 October 2024 be revoked and the Grant of Letters of Administration be delivered to the Registry within seven (7) days of the date of these Orders.
4. As to the estate of Pellump Myrteza:
 - (a) pursuant to s 6 of the *Succession Act 1981* (Qld) and r 610(1)(j) of the *Uniform Civil Procedure Rules 1999* (Qld), Kent William Dalziel be appointed as administrator of the estate and subject to the formal requirements of the registrar, Letters of Administration on intestacy be granted to Kent William Dalziel;
 - (b) pursuant to s 45(4) of the *Succession Act 1981* (Qld), all property of the deceased, Pellump Myrteza, vest in Kent William Dalziel as administrator and be deemed to have so vested on the date of Pellump Myrteza's death;
 - (c) pursuant to s 114 of the *Land Title Act 1994* (Qld) Kent William Dalziel as the administrator be registered as proprietor of all real property of Pellump Myrteza; and
 - (d) Burim Myrteza deliver all documents in his possession relevant to issues remaining outstanding in the estate to Kent William Dalziel (care of The Estate Lawyers, 22/69 Ann Street, Brisbane) within fourteen (14) days of the date of these Orders.
5. As to the estate of Gjyltan Myrteza:
 - (a) pursuant to s 6 of the *Succession Act 1981* (Qld) and rule 610(1)(j) of the *Uniform Civil Procedure Rules 1999* (Qld) Kent William Dalziel be appointed as administrator of the estate and subject to the formal requirements of the registrar, Letters of Administration on intestacy be granted to Kent William Dalziel;
 - (b) pursuant to s 45(4) of the *Succession Act 1981* (Qld), all property of the deceased, Gjyltan Myrteza, vest in Kent William Dalziel as administrator and be deemed to have so vested on the date of Gjyltan Myrteza's death;
 - (a) pursuant to s 114 of the *Land Title Act 1994* (Qld) Kent William Dalziel as the administrator be registered as proprietor of all real property of Gjyltan Myrteza; and
 - (b) Burim Myrteza deliver all documents in his possession relevant to issues remaining outstanding in the estate to Kent William Dalziel (care of The Estate Lawyers, 22/69 Ann Street, Brisbane) within fourteen (14) days of the date of these Orders.
6. Pursuant to s 68 of the *Succession Act 1981* (Qld), Kent William Dalziel is authorised to be remunerated for undertaking legal and other work in the capacity as administrator in both estates in accordance with the Supreme Court scale of costs, as varied from time to time, on the indemnity basis, with such

remuneration to be assessed by an independent costs assessor at approximately two (2) monthly intervals and on completion of the administration.

7. Kent William Dalziel is authorised to retain his firm, The Estate Lawyers (or any other firm), to act on his behalf as administrator of the estates 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 those fees are to be assessed on completion of his administration.
8. I will hear the parties on the question of costs.