DISTRICT COURT OF QUEENSLAND

CITATION:	*Grow Asset Finance Pty Ltd v Bassi & Anor* [2022] QDC 23
PARTIES:	**GROW ASSET FINANCE PTY LTD** (plaintiff) **v** **JATINDER SINGH BASSI** (first defendant) and **SATNAM KAUR SAHOTA** (second defendant)
FILE NO:	3149/2021
DIVISION:	Civil
PROCEEDING:	Application
ORIGINATING COURT:	Brisbane District Court
DELIVERED ON:	17 February 2022
DELIVERED AT:	Brisbane
HEARING DATE:	Listed for hearing on the papers on 11 February 2022.
JUDGE:	Byrne QC DCJ
ORDERS:	1. **The application is dismissed.** 2. **There be no order as to costs.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – JUDGMENTS AND ORDERS – SUBSTITUTED SERVICE – EX PARTE – EVIDENCE - whether application for substituted service should be granted – where the affidavit supporting the application attached a report from a process service firm – where the affidavit did not directly depose to the truth of the contents of the report – where the report contained hearsay on hearsay - whether there is sufficient admissible evidence to grant the application
LEGISLATION:	*Evidence Act 1977* *Uniform Civil Procedure Rules*
CASES:	*Bendigo & Adelaide Bank Limited v Wilkin & Anor* [2018] QDC 16 *Permanent Custodians Limited v Smith* [2006] QSC 333
COUNSEL:	No appearance
SOLICITORS:	SLF Lawyers for the applicant.

Introduction

[1] The plaintiff has applied, *ex parte*, for an order authorising substituted service pursuant to r 116 of the *UCPR* on the first defendant in an action earlier commenced in this Court. It was requested that the matter be heard on the papers.

[2] The application is not, in my view, supported by sufficient admissible evidence and so must be refused. Alternatively, if the material is admissible, I am not satisfied of the matters required to grant the application.

Background

[3] On 3 December 2021 the plaintiff commenced an action against the first and second defendants claiming monies owing under a Rental Agreement and Guarantee executed in respect of certain goods, possession of specified real property, interest and other ancillary orders.

[4] The second defendant was served with the Claim and Statement of Claim on 6 December 2021. Default judgment was entered against her on 21 January 2022 for the whole of the money claim.

[5] On 19 January 2022 the plaintiff filed the present application for substituted service on the first defendant. An affidavit has been sworn in support of the application and is the only source of evidence to support it.

[6] The application relies on two categories of evidence. The first is a Title Search showing the first defendant to be the registered owner of a particular parcel of land. As is the usual course, that document does not refer to that land in terms of a street address. The manner of drafting the affidavit tends to imply that it refers to the stated address the subject of the application. This issue may not have caused the application to be refused if it stood alone, but it does not.

[7] The second category of evidence relied on is a report from a process service firm outlining the attempts that were said to have been undertaken to serve the first defendant, as well as the nature of a conversation with a nearby resident concerning the occupancy status of the stated address. This report is exhibited to the affidavit, apparently in an attempt to place the matter before this Court on the basis of information and belief – r 430(2) of the *UCPR*.

[8] The nature and scope of information that can be properly placed before the court on an "information and belief" basis was considered by Porter QC DCJ in *Bendigo & Adelaide Bank Limited v Wilkin & Anor*[1] ("*Wilkin*"). It is unnecessary to repeat what his Honour there noted, but I adopt his observations. Many of the same issues concerning inadmissibility of the assertions in the affidavit that arose in *Wilkin* arise here.

[9] First, while the deponent identifies the source of the information as being the report exhibited to the affidavit, she does not specifically depose to a belief in the truth of

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1 [2018] QDC 16, [9]-[17].

any or all of its contents. Towards the end of the affidavit, and after a summary of the report, that she does "*verily believe*" that reasonable efforts have been made to effect personal service, that service is being avoided, that further attendance at the stated address will not guarantee personal service and that the documents will come to the attention of the first defendant if posted by Express Post to the stated address. These are all statements of belief about conclusions the court must make. They are not proper subject matter for the deponent to swear to and they do not cure the defect of failing to swear to the belief in the truth of the facts, as opposed to conclusions.

[10] Second, the report refers to "*our agent*" having attempted service at various times at the stated address. It does not refer to the identity of the agent, nor if it was the same agent on each occasion. While it might be reasonably inferred as being the same person who effected service on the second defendant when referring to an attempt on 6 December 2021, the Court cannot be expected to trawl through the Court file to find the identity of that person.

[11] Thirdly, in any event the deponent is referring to another person's report which in turn refers to what somebody else had said or done. That is, at least, hearsay on hearsay and is objectionable on that basis.[2]

[12] Fourthly, the deponent "verily believes" that the subject documents will come to the first defendant's attention if posted by Express Post, but fails to explain why she holds that belief. In fact, the referenced conversations with someone else at that address, at face value, suggest the first defendant is in New South Wales. While a cynical mind may doubt that to be the case, there is no information to contradict the assertion and it is not so outrageous as to be capable of outright dismissal. No reason is given by the deponent why, in light of that, she believes postal service to the stated address will be effective.

[13] Rule 116 of the *UCPR* requires the applicant to satisfy the Court that personal service is impracticable and that another means of service is likely to bring the document to the attention of the other party. The other means of service proposed here is service by Express Post to the stated address.

[14] The applicant must, to satisfy the first of these requirements, prove that more than inconvenience will be experienced in effecting personal service.[3] While there is no hard and fast rule as to where the division between impracticability and inconvenience lies, it seems to me that more than having to attend a stated address, even multiple times, or waiting while a person returns from interstate is required. Proof, either directly or circumstantially, that the first defendant has returned to Queensland and is actively avoiding service may be sufficient.

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2 *Wilkin, supra* at [15].

3 *Permanent Custodians Limited v Smith* [2006] QSC 333, [4].

[15] As to the second requirement, I have already expressed views as to why I have not been satisfied about that matter. This too may be more readily inferred if it can be shown that the first defendant has returned to Queensland.

[16] For reasons earlier outlined, I consider there is no admissible evidence proving either of the matters required to be proven under r 116 but, if I am wrong about that, the affidavit taken at face value fails to satisfy me of either requirement under r 116.

[17] For that reason, I need not consider if the inadmissible material in the affidavit should be received under rr 5 or 371 of the *UCPR* , s 129A of the *Evidence Act 1977* or any other provision, as Porter QC DCJ did in *Wilkin*.

Orders

[18] My orders are:

1. The application is dismissed.

2. There be no order as to costs.