

COURT OF APPEAL

**MULLINS P
BODDICE JA
MARTIN SJA**

**CA No 253 of 2023
DC No 1664 of 2023**

STORRY, Venetia Louise

Applicant

v

**AUSTRALIAN FINANCIAL SECURITY
AUTHORITY**

First Respondent

**COMMONWEALTH DEPARTMENT OF
PUBLIC PROSECUTIONS**

Second Respondent

BRISBANE

MONDAY, 15 APRIL 2024

JUDGMENT

MULLINS P: I will ask Boddice JA to deliver the first judgment.

BODDICE JA: By complaint filed in the Magistrates Court of Queensland, the applicant was charged with two offences contrary to the *Bankruptcy Act 1966* (Cth). The complaint was listed for summary hearing on 13 June 2023. On 12 June 2023, the applicant filed an application seeking either an adjournment, or dismissal of the complaint.

On 13 June 2023, an Acting Magistrate refused the application for an adjournment. The

Acting Magistrate indicated that the hearing would proceed later that day.

Following that indication, the applicant filed in the District Court of Queensland a notice of appeal pursuant to section 222 of the *Justices Act 1886* (Qld). The Acting Magistrate, upon becoming aware of that notice, adjourned the complaint for mention on a subsequent day.

On 13 December 2023, the primary Judge ordered that the appeal be dismissed on the ground that it was incompetent as the order made was not “upon the complaint” within the meaning of section 222 of the *Justices Act 1886* (Qld). An order was also made that an application to stay the further prosecution of the complaint in the Magistrates Court pending the appeal be dismissed.

The applicant seeks leave to appeal the orders of the District Court. The applicant submits that the District Court judge erred in finding that the appeal was incompetent as the application was not interlocutory. Further, the application also sought dismissal of the complaint, which was itself dismissed, and the order was not interlocutory.

The substance of the applicant’s submissions are that the Acting Magistrate had, by the order, dismissed the application to dismiss the complaint and the application was itself a complaint. Further, as the dismissal application was not an interlocutory application, the appeal was not incompetent.

There is no substance in the applicant’s contentions. As the District Court judge observed, the Acting Magistrate refused the adjournment application. The balance of the application did not proceed because the applicant, prior to its resumption in the afternoon, filed the notice of appeal in the District Court. Further, even if the Acting Magistrate’s order included a refusal to dismiss the proceedings summarily, such an order did not dispose of the complaint.

Section 222 of the *Justices Act 1886* (Qld) gives a right of appeal from:

“...any order made...upon a complaint for an offence or breach of duty...”

Those words refer to an order disposing of the complaint itself. They do not include an order

made during the course of the proceedings instituted by the complaint; see *Schneider v Curtis* [1967] Qd R 300 at 304-305, see also *United Petroleum Pty Ltd v Sargent* [2019] QCA 295.

Contrary to the applicant's contentions, her application for a dismissal of the complaint was not a "complaint" for the purposes of the *Justices Act 1886* (Qld). Section 4 of that Act defines "complaint" to mean an information, complaint or charge before the Magistrates Court. The term "charge" is defined in schedule 1 of the *Acts Interpretation Act 1954* to mean, relevantly, a complaint under the *Justices Act 1886* (Qld).

The applicant's application for a dismissal of that complaint was an application brought within the complaint. Any order dismissing the dismissal application was not an order made "on a complaint for an offence or breach of duty".

The primary Judge did not err in law in dismissing the appeal. It was incompetent. The applicant contended that the Magistrates Court power to control proceedings supported her contention. Those powers have no relevance to the scope of an appeal under section 222 of the *Justices Act 1886* (Qld).

There were other matters raised as grounds of appeal concerning provisions of the *Bankruptcy Act 1966* (Cth). Those matters are not relevant to a determination of whether the decision of the primary judge was wrong in law or in fact.

I would order that the application for leave to appeal be dismissed.

MULLINS P: I agree.

MARTIN SJA: I agree.

MULLINS P: The order of the Court is application for leave to appeal dismissed. So we will adjourn the Court. Thank you.