

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Tow.com.au Pty Ltd & Anor* [2018] QSC 146

PARTIES: **STATE OF QUEENSLAND (THROUGH THE QUEENSLAND POLICE SERVICE)**
(applicant)
v
TOW.COM.AU PTY LTD
ACN 168 470 639
(first respondent)
DOMINIC HOLLAND
(second respondent)

FILE NO/S: SC No 6280 of 2018

DIVISION: Trial

PROCEEDING: Originating Application

DELIVERED ON: 14 June 2018 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 14 June 2018

JUDGE: Atkinson J

ORDERS:

- 1. The Respondents, by themselves, their servants and agents, be restrained until further order of the Court from directly or indirectly making any public announcement about matters contemplated by the Managed Services Deed dated 29 April 2014 (Managed Services Deed), including any discussions between the Applicant and the Respondents, without the prior written consent of the Applicant.**
- 2. Order 1 does not restrain the Respondents from:**
 - (i) making disclosure by law or by order of any court or tribunal of competent jurisdiction;**
 - (ii) making disclosure to any Government Agency, stock exchange or other regulatory body;**
 - (iii) making allegations by way of originating process or other court document for the purposes of legal proceedings.**
- 3. The Respondents, by themselves, their servants and agents or otherwise, be restrained from directly or indirectly disclosing to any third party, personal or confidential information (as that term is defined in the**

Managed Services Deed) in connection with towing or storage services provided under or in connection with the Managed Services Deed without first obtaining the written consent of the Applicant to do so, or as authorised by order of this Court.

4. Pursuant to clause 24.6 of the Managed Services Deed, by 4:00 pm on 21 June 2018, the Respondents, by themselves, their servants and agents or otherwise, must:

- (i) first, deliver up to the Applicant all documents and other materials containing, recording or referring to confidential information (as that term is defined in the Managed Services Deed); and**
- (ii) then, erase or destroy all electronic and other intangible copies of records containing, recording or referring to confidential information**

which are in the possession, power or control of the First and Second Respondents, their servants or agents.

5. Liberty to apply on 2 clear days' notice.

6. Costs reserved.

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INJUNCTIONS FOR PARTICULAR PURPOSES – TO RESTRAIN BREACH OF CONTRACT – where the applicant and the first respondent entered into a deed wherein the first respondent would provide towing and storage services to the applicant – where clauses 24 and 25 of the deed included obligations of confidentiality and privacy – where the respondents had access to a database containing a large amount of confidential information belonging to the State and private information relating to members of the public – where the respondents had stated in news reports their intention to sell the database to a third party – whether the applicant was entitled to injunctive relief

COUNSEL: A Nicholas for the applicant
The second respondent appeared for the first respondent and on his own behalf

SOLICITORS: Crown Law for the applicant
The second respondent appeared for the first respondent and on his own behalf

- [1] The applicant, the State of Queensland, seeks an injunction to restrain the respondents, Tow.com.au Pty Ltd, and Dominic Holland, from doing certain things in breach of a deed entered into by the State of Queensland and City Towing & Impoundment Pty Ltd, a predecessor in title to Tow.com.au Pty Ltd. Mr Holland informed the Court that he is the managing director of that company and speaks on its behalf.
- [2] It appears that the State of Queensland entered into a deed with the company to provide for certain towing and impoundment services. That deed expired according to its terms and was terminated on 31 October 2017. Notwithstanding the expiry of the deed, certain clauses of the deed survived. Before I move on to what they do include, I should say that they specifically do not include clause 19 which is the paragraph dealing with payment of the respondent company for services provided. It does, however, retain paragraphs that deal with confidential and personal information which has been gathered by the respondent company undertaking its duties under the deed.
- [3] Clause 24 prohibits the service provider from using any confidential information, except for the purposes of the deed, or disclosing any confidential information except in accordance with two subclauses of clause 24. Confidential information is defined in clause 1, which is one of the clauses that also survives the termination of the deed, and it is defined to mean information of or supplied by the State.
- [4] It was necessary for the State to provide confidential information to the respondent company for the purposes of the deed but, presumably, its concern about the security and control of that confidential information was the reason for clause 24 which provides strict limits on the use and disclosure of that information which has been provided by the State. There is also in that clause a restriction on public announcements by the service provider which provides that the service provider must not, directly or indirectly, make a public announcement about or comment on the contents of the matters contemplated by this deed, including any discussions between the parties without the prior written consent of the State.
- [5] Paragraph 24.6 provides that on written request of the State or termination of the deed, the service provider must without delay deliver to the State all documents and other materials containing, recording or referring to confidential information, and erase or destroy in another way all electronic and other intangible records containing, recording or referring to confidential information which are in the possession, power or control of the service provider or of any person to whom the service provider has given access.
- [6] Unfortunately, it appears from the material that after the termination of the agreement, far from delivering to the State all the documents and other material containing, recording or referring to confidential information, that confidential information has been retained and used by the service provider contrary to the terms of the deed. And it would appear that unless ordered to, the respondents have no intention of complying with that provision of the deed and, instead, the respondents have control of sensitive, confidential information which belongs to the State which it appears they intend to use and/or sell as an asset of the business. That cannot be allowed to happen.

- [7] There is, then, the question of private information. It appears that apart from confidential information provided by the State, the service provider has been provided with personal information by persons to do with payment of fees for towing and impoundment in particular. Clause 25 of the deed binds the service provider to obligations arising under privacy laws, and requires the service provider to conform with the statutory obligations applicable to the State as if they were binding upon the service provider. Those obligations are found in the *Information Privacy Act 2009* (Qld) where a number of information privacy principles are set out. That is obviously extremely sensitive personal information which, again, it appears from the material, notwithstanding the unsworn protestations of Mr Holland to the contrary, that he has threatened to disclose and, indeed, may have well already disclosed contrary to the requirements of the deed.
- [8] Accordingly, in view of the sensitivity of this information, and the deleterious effect upon the citizens of this State if this information were to be divulged in the way threatened by the respondents, I am prepared to make the orders as set out in the draft order with some amendments. I am not able to make an order for the delivery up of personal information until that has been requested or demanded by the State which has not yet happened, so I will give liberty to apply once I have made the order.
- [9] The orders will be:
1. The Respondents, by themselves, their servants and agents, be restrained until further order of the Court from directly or indirectly making any public announcement about matters contemplated by the Managed Services Deed dated 29 April 2014 (**Managed Services Deed**), including any discussions between the Applicant and the Respondents without the prior written consent of the Applicant.
 2. Order 1 does not restrain the Respondent from
 - (i) making disclosure by law or by order of any court or a tribunal of competent jurisdiction;
 - (ii) making disclosure to any Government Agency, stock exchange or other regulatory body;
 - (iii) making allegations by way of any originating process or other court document for the purposes of legal proceedings.
 3. The Respondents, by themselves, their servants and agents or otherwise, be restrained from directly or indirectly disclosing to any third party personal or confidential information (as that term is defined in the Managed Services Deed) in connection with towing or storage services provided under or in connection with the Managed Services Deed without first obtaining the written consent of the Applicant to do so or as authorised by order of this Court.
 4. Pursuant to clause 24.6 of the Managed Services Deed, by 4:00 pm on 21 June 2018, the Respondents, by themselves, their servants and agents or otherwise, must
 - (i) first, deliver up to the Applicant all documents and other materials containing, recording or referring to confidential information, as that term is defined in the Managed Services Deed, and

- (ii) then, erase or destroy all electronic or other intangible copies of records containing, recording or referring to confidential information which is in the possession, power or control of the First or Second Respondents, their servants or agents.
- 5. Liberty to apply on two clear days' notice.
- 6. Costs reserved.