

**SUPREME COURT OF QUEENSLAND**

**CIVIL JURISDICTION**

**BOND J**

**SC No 6593 of 2017**

<b>STEPHEN JAMES PARBERY AND MICHAEL ANDREW OWEN IN THEIR CAPACITIES AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQ) ACN 009 842 068</b>	<b>First Plaintiffs</b>
<b>QUEENSLAND NICKEL PTY LTD (IN LIQ) ACN 009 842 068</b>	<b>Second Plaintiff</b>
<b>JOHN RICHARD PARK, KELLY-ANNE LAVINA TRENFIELD &amp; QUENTIN JAMES OLDE AS LIQUIDATORS OF QUEENSLAND NICKEL PTY LTD (IN LIQUIDATION) ACN 009 842 068</b>	<b>Third Plaintiffs</b>
<b>QNI METALS PTY LTD ACN 066 656 175</b>	<b>First Defendant</b>
<b>QNI RESOURCES PTY LTD ACN 054 117 921</b>	<b>Second Defendant</b>
<b>QUEENSLAND NICKEL SALES PTY LTD ACN 009 872 566</b>	<b>Third Defendant</b>
<b>CLIVE FREDERICK PALMER</b>	<b>Fourth Defendant</b>
<b>CLIVE THEODORE MENSINK</b>	<b>Fifth Defendant</b>
<b>IAN MAURICE FERGUSON</b>	<b>Sixth Defendant</b>
<b>MINERALOGY PTY LTD ACN 010 582 680</b>	<b>Seventh Defendant</b>
<b>PALMER LEISURE AUSTRALIA PTY LTD ACN 152 386 617</b>	<b>Eighth Defendant</b>
<b>PALMER LEISURE COOLUM PTY LTD ACN 146 828 122</b>	<b>Ninth Defendant</b>

**FAIRWAY COAL PTY LTD  
ACN 127 220 642**

**Tenth Defendant**

**CART PROVIDER PTY LTD  
ACN 119 455 837**

**Eleventh Defendant**

**COEUR DE LION INVESTMENTS PTY LTD  
ACN 006 334 872**

**Twelfth Defendant**

**COEUR DE LION HOLDINGS PTY LTD  
ACN 003 209 934**

**Thirteenth Defendant**

**CLOSERIDGE PTY LTD  
ACN 010 560 157**

**Fourteenth  
Defendant**

**WARATAH COAL PTY LTD  
ACN 114 165 669**

**Fifteenth Defendant**

**CHINA FIRST PTY LTD  
ACN 135 588 411**

**Sixteenth Defendant**

**COLD MOUNTAIN STUD PTY LTD  
ACN 119 455 248**

**Seventeenth  
Defendant**

**EVGENIA BEDNOVA**

**Eighteenth Defendant**

**ALEXANDAR GUEORGUIEV SOKOLOV**

**Nineteenth Defendant**

**ZHENGHONG ZHANG**

**Twentieth Defendant**

**SCI LE COEUR DE L'OCEAN**

**Twenty-first  
Defendant**

**DOMENIC MARTINO**

**Twenty-second  
Defendant**

**MARCUS WILLIAM AYRES**

**First Defendant  
added by  
counterclaim**

**STEFAN DOPKING**

**Second Defendant  
added by  
counterclaim**

**BRISBANE**

**FRIDAY, 27 JULY 2018**

**JUDGMENT**

**BOND J:** On 25 May 2018 I published my reasons for judgment in an application for freezing and ancillary orders. As those reasons reveal, during the course of the hearing of that application, an application that I recuse myself was made and lost by Mr Palmer: see my reasons for judgment in *Parbery v QNI Metals Pty Ltd* [2017] QSC 231. My decision in the judgment, handed down 25 May, is, I am informed, the subject of appeal. I do not know whether the appeal involves any submission that I erred in rejecting the then recusal application.

For some time now, today has been set as the day on which I would make a number of important decisions in relation to the management of the present litigation.

On 19 April 2018 I made an order that I would list the proceeding for further directions on a date to be fixed in the week commencing 23 July 2018. Shortly thereafter I notified the parties that day would be today. So for some months now the parties have known that on this day, at which time I had made a whole day available, I would deal with a number of important considerations, including the question of whether the proceeding should be set down for trial in mid-February next year or some other date, and a number of ancillary considerations.

As I have already mentioned, it transpired that a little over a month after making those timetabling orders and penning this date down, I decided the application for freezing orders. It seems that some of the defendants are likely to bring an application that I recuse myself from further management of this case and, effectively, from further involvement in this case, whether it be in terms of the case management or in any dispositive hearings in this case. That possibility was first flagged in early June of this year.

On 20 June 2018 I caused my Associate to raise, by email, the question of when any recusal application was to be made. At that time it was not clear whether it definitely would be made or whether it was a possibility that an application was to be made. I posited that I could hear the application the week after 20 June or that it could be listed as the first matter to be addressed at the hearing on this day, that is, 27 July. I invited the parties to clarify.

Ultimately, no agreement was reached and I caused an email to be sent on 26 June that I would deal with any application to vacate the review hearing today if one was made but that, until then, my expectation was that parties would continue to comply with existing orders and directions, including that there would be a review hearing on 27 July.

An application is made on behalf of all of the defendants that I should make the following directions in relation to a recusal application:

1. *If any party intends to make an application for recusal of Bond J (“recusal application”) that party must file and serve the recusal application not later than 7 August, 2018.*
2. *Any material in support of the recusal applications must be filed by 14 August, 2018.*
3. *If any party intends to oppose the recusal application, they file and serve any responsive material by 21 August, 2018.*
4. *The applicant for the recusal application file and serve an outline of submissions by 28 August 2018.*

5. *Any party opposing the recusal application file and serve an outline of submissions by 4 September 2018.*
6. *The application for recusal be heard on the first available date after 4 September, 2018.*

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In support of that application the defendants rely on affidavit of Mr Palmer sworn 20 July 2018, who describes the steps which were taken after I published my reasons for judgment on 25 May. He deposed, amongst other things:

- 10 11. *The defendants have provided instructions to seek advice on a recusal application for Bond, J to be recused from the proceedings and its case management.*
12. *On 25 June 2018, I caused correspondence to be sent to KWM and HWLE regarding the filing of an appeal of the 25 May 2018 orders of Bond J and advising of my intention to bring such a recusal application by no later than 7 August 2018. Annexed hereto and marked as exhibit "CFP-181" are copies of the correspondence.*
- 15 13. *Relevant advices regarding the recusal could not be received from counsel until 21<sup>st</sup> July 2018.*
- 20 14. *The body of advice indicates merit for an application to be made for a recusal application. This advice is intended to be despatched overseas to the defendants that are abroad.*
15. *The defendants shall require 7 days to consider the advices.*
16. *No further steps should be taken in these proceedings should be taken until the recusal application is heard and determined.*
- 25 17. *The following correspondence has been exchanged between myself and KWM:*

<i>DATE</i>	<i>CORRESPONDENCE</i>	<i>EXHIBIT</i>
<i>27 June 2018</i>	<i>Letter King &amp; Wood Mallesons to Clive Palmer</i>	<i>CFP-182</i>
<i>2 July 2018</i>	<i>Letter Clive Palmer to King &amp; Wood Mallesons</i>	<i>CFP-183</i>
<i>5 July 2018</i>	<i>Letter King &amp; Wood Mallesons to Clive Palmer</i>	<i>CFP-184</i>
<i>18 July 2018</i>	<i>King &amp; Wood Mallesons to Clive Palmer</i>	<i>CFP-185</i>
<i>20 July 2018</i>	<i>Letter Clive Palmer to King &amp; Wood Mallesons</i>	<i>CFP-186</i>

30 I have before me material which reveals the parties' attitude to many of the considerations which are listed to be dealt with by way of case management today. It is fair to say that the attitude of the defendants is nothing at all should occur until after the recusal applications are heard. It also seems that there is some ambiguity as to whether it is certain that a recusal application will be made. That ambiguity  
35 derives from some observations made by Mr Palmer in submissions to me. Nevertheless, counsel on behalf of the defendant has said that it is likely that a recusal application will be made.

40 It is said that if I proceed to deal with the matters for direction today and an application for recusal is made and I am persuaded that I should not continue further in the case, that any directions that I will make today will be wasted. To test that proposition, one important consideration that I will deal with today is whether the

matter should be set down for trial next year. Let it be assumed for the sake of argument that I am persuaded so to do. That I set the matter down for trial at some time next year before me, but am subsequently persuaded that I should recuse myself, does not necessarily mean that that direction will be wasted or, indeed, that the trial could not proceed on the date as scheduled. The most likely course would be that some other judge would be scheduled to handle the case. It might be, of course, that that other judge needs to hear and make further timetabling considerations. But I am not persuaded that even if a recusal application is made and I am persuaded that my duty lies in recusing myself, that any decisions I make as to case management are wasted.

Logically, of course, if there is merit in the notion that I recuse myself from case management decisions, that argument should be put before me today to seek to persuade me not to continue to embark upon case management today. The possibility that I will see my duty as requiring me so to do was well flagged in emails. No such application was brought.

I conclude that I will not accede to the argument advanced by the defendants that nothing should be determined or heard until the recusal applications are heard. That said, in light of the intimation by the defendants that an application is likely to be made, I see no harm in making directions for the sensible management of the application and I will now proceed to hear what directions I should make.