SUPREME COURT OF QUEENSLAND

CITATION:	*Commonwealth Bank of Australia v Bright & Ors* [2002] QSC 233
PARTIES:	**COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124** (applicant) **v** **JOHN WINSTON BRIGHT** (first respondent) **BADJA PTY LTD ACN 010 007 342** (second respondent) **HEALTH EQUIPMENT HIRE & SUPPLIES PTY LTD ACN 010 008 009** (third respondent)
FILE NO/S:	SC No. 6970 of 2002
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court Brisbane
DELIVERED ON:	16 August 2002
DELIVERED AT:	Brisbane
HEARING DATE:	13 August 2002
JUDGE:	White J
ORDER:	**1. The respondents by themselves, their employees, agents or officers are restrained –** **(a) from sending any material whether in physical or electronic form which wholly or in part relates to any matter between the applicant and the respondents finally determined in the Deed of Compromise executed by the respondents on 11 October 2000;** **(b) making any assertion to any person about the applicant or any of its officers or employees, or about any rights or entitlements against the applicant, its officers or employees, or allegations of detriment occasioned to any of the respondents by any act or omission of the applicant, its officers or employees in**

relation to any of the subject matter of the Deed of Compromise (other than to a respondent or a legal adviser retained by a respondent);

(c) making any assertion to any person in relation to the rights and entitlements determined by the Deed of Compromise other than in accordance with the Deed of Compromise;

(d) taking any other action howsoever, and by whatsoever means, as regards any other person, including, but not limited to, any terms and mode of correspondence and communication, inconsistent with the terms of the Deed of Compromise.

2. The respondents pay the applicant's costs of and incidental to the application to be assessed.

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – JURISDICTION AND AVAILABILITY OF REMEDY GENERALLY – WHERE PROPRIETARY RIGHT BASIS OF JURISDICTION – IN GENERAL – where executed deed of settlement between the parties contained confidentiality clause – where respondent publicised the terms of the deed of settlement – whether applicant is entitled to order restraining respondent from such action

COUNSEL: Mr R. Bain QC and Mr D Atkinson for the applicant
Mr J Bright appeared for himself and the second and third respondents

SOLICITORS: Clarke & Kann for the applicant

[1] The applicant is the Commonwealth Bank of Australia (the "Bank"). The respondents are Mr John Bright and two companies of which he is the sole director. Mr Bright has appeared for himself and the corporate respondents. The Bank seeks orders in broad terms to restrain Mr Bright (and the companies) from further ventilating matters which were the subject of a Deed of Compromise between the Bank and the respondents executed on 11 October 2000.

[2] The respondents were in dispute with the Bank over financing a land development project. The dispute was mediated by Mr I Hanger QC and a compromise reached, the terms of which are set out in a Deed of Compromise executed by Mr Bright on his own behalf and on behalf of the respondent companies. Almost immediately after executing the Deed of Compromise Mr Bright set about re-agitating his grievances with the Bank. This course of conduct culminated in an application to this court in May 2001 for declarations about the validity and enforceability of the Deed of Compromise and the binding nature of the obligations of the parties contained in it. I heard that application and made declarations and orders on 25 May 2001 in the following terms:

"1. It is declared that the Deed of Compromise which is Exhibit "SBC1" to the Affidavit of Stephen Barry Collins sworn May 18, 2001 is:-

(a) valid;

(b) enforceable;

(c) binding upon the Applicant and the Respondents; and

(d) finally determined the rights and entitlements of the Applicant and the Respondents in relation to the subject matter of the Deed of Compromise.

2. The Respondents, their servants, agents or officers are hereby restrained from:-

(a) taking any step in furtherance of rights or entitlements finally determined by the Deed of Compromise other than those in accordance with the Deed of Compromise; and

(b) corresponding with the Applicant or any of its servants, agents or officers in relation to any matter finally determined by the Deed of Compromise.

3. The Respondents pay the costs of the Application to be assessed or agreed."

The order is endorsed pursuant to r 665(3) of the *Uniform Civil Procedure Rules* that Mr Bright must obey the order or be liable to process compelling compliance.

[3] Mr Bright has not felt restrained by those declarations and orders or the endorsement from continuing to communicate with employees of the Bank and many other people about the subject matter of the Deed of Compromise. This application by the Bank is for injunctive relief to restrain Mr Bright from this conduct – not only in respect of employees of the Bank but any other person not exempted in the Deed of Compromise. The Bank has chosen not to proceed against Mr Bright for purported contempt of the order of 25 May 2001.

[4] On this application Mr Bright ranged very widely over his grievances. There can be no doubt that his life has been consumed by the events which led to the Deed of Compromise. He has engaged the attention of police, members of parliament both State and Federal, neighbours, family and friends. In order to put this application in some context it is necessary to give a brief history of the matter. Mr Bright had been a customer of the Bank in good standing for very many years. He was a business man who, it seems, dealt in health equipment. Mr Bright wished to develop an area of land at 110 Dairy Swamp Road, Belmont into some 22 blocks. It

is not easy to discern precisely what the arrangement was with the Bank about the financing or refinancing of the subdivision and for these purposes it is unnecessary that I should do so except to comment that Mr Bright was and is greatly aggrieved by what he saw as an error on the part of a relatively junior bank officer about the subdivisional blocks contracts and for which the Bank did not accept responsibility. He maintains that the bank was responsible for losses of up to $4.5 million which he or other investors sustained either directly or as lost profit on the development.

[5] Mr Bright was and is in serious conflict with numbers of persons associated with carrying out the development such as contractors, engineers and builders. There have been allegations of violence against Mr Bright and police have been involved. Mr Bright attributes all of these problems as initiating with the Bank and the shortcomings of its staff. Over time there was a complete breakdown of confidence between Mr Bright and the Bank and in an effort to reach a resolution of these matters the Bank proposed referring his grievances to an independent mediator who would be paid for by the Bank. Mr Bright had not then and has not since commenced any legal proceedings against the Bank.

[6] Mr Ian Hanger QC conducted the mediation on 5 October 2001. Mr Bright was represented by a solicitor from the firm Bain Gasteen. Settlement was not reached at the mediation but a Deed of Compromise was drafted for Mr Bright's consideration. Mr Bright wrote to the Bank and the mediator on 10 October 2000 from which, so far as can be gathered, he seemed to wish the mediation to continue and to bring a number of people associated with the development and the bank loan as witnesses. The Bank was not prepared to continue to participate in the mediation. The offer in the Deed of Compromise was said to be open for acceptance until 10.00 am on 12 October 2000 after which it would lapse and not be revived.

[7] On 11 October Mr Bright's solicitor faxed to the Bank's solicitors Mr Bright's acceptance of the Bank's offer and enclosed the executed Deed of Compromise. Mr Bright's solicitor was the witness to Mr Bright's signature on his own behalf and on behalf of the two respondent companies. The original of the executed Deed of Compromise was received by the Bank's solicitors on 13 October 2000.

[8] By the terms of the Deed the Bank agreed to pay to Mr Bright the sum of $25,000 and to give him a letter in terms which were set out in the Deed. The Bank has carried out its obligations. Although lengthy it is necessary to set out its terms.

"**BACKGROUND**

A JOHN WINSTON BRIGHT and COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124 are currently involved in a dispute regarding the development or subdivision of 110 Dairy Swamp Road Belmont, the financing or potential financing of that development or subdivision, the financial accommodation provided to JOHN WINSTON BRIGHT, BADJA PTY LTD ACN 010 007 342 and HEALTH EQUIPMENT HIRE AND SUPPLIES PTY LTD ACN 010 008 009 and the

negotiations between the parties in respect of that financial accommodation ("the Dispute").

B COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124, JOHN WINSTON BRIGHT, BADJA PTY LTD ACN 010 007 342 and HEALTH EQUIPMENT HIRE AND SUPPLIES PTY LTD ACN 010 008 009 have agreed to release each other from all claims that each party may have had against each other party arising out of the dispute on the terms contained in this Deed.

OPERATIVE PROVISIONS

(A) COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124 shall, within 7 days of the execution of this Deed, pay to JOHN WINSTON BRIGHT the sum of $25,000.00.

(B) *Commonwealth Bank of Australia shall, within seven days of the execution of this Deed cause to be delivered to John Winston Bright a letter in the following terms:*

John Winston Bright has been a customer of the Commonwealth Bank of Australia for more than forty years.

In 1998, a new relationship manager was assigned to Mr Bright's portfolio. Unfortunately, that assignment did not work out as it might have and the relationship between the Bank and Mr Bright became strained.

Mr Bright was an exemplary customer of the Bank and one with whom the Bank had no difficulty dealing (except for the period following the appointment of the new relationship manager in 1988).

Mr Bright is not indebted to the Bank. Save in respect of a small housing loan, which is not in default and has been well maintained, Mr Bright has extinguished all commitments to the Bank.

The Bank regrets the breakdown in the relationship between it and Mr Bright and wishes Mr Bright well in whatever business endeavours he undertakes.

1. Upon and by virtue of the payment of the said sum of $25,000.00 each of the parties listed in the Schedule in the column headed "Releasing Party"

releases and discharges the party in the column headed “Released Party” from and in respect of all actions, claims, suits and demands (including for interest and costs) which any Releasing Party may have at present or at any future time arising out of or relating to or incidental to the Dispute.

2. Each of the parties to this Deed acknowledges and agrees with the others that this Deed is entered into by all of them with a denial of liability one to the other and that the payment referred to in Clause 0 is made by the paying party to JOHN WINSTON BRIGHT on a similar basis.

3. Each Releasing Party acknowledges and agrees that this Deed may be pleaded by COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124 as a bar to any action or suit taken at any time by any Releasing Party in respect of any claim contemplated by clause 2 of this Deed.

4. The parties agree that each party will bear its own costs (including legal and stamp duty costs) of and incidental to the preparation, negotiation and execution of this Deed.

5. The contents of this Deed (and all books, documents and information made available to any party for the purposes of entering into this Deed or in the course of the performance of this Deed) shall be kept confidential by each Releasing Party and shall not be disclosed to any other person without the prior written consent of the Released Party.

6. Clause 5 shall not apply in relation to the following circumstances:

   a any disclosure for the purpose of enforcing the terms of this Deed;

   b any disclosure required by law;

   c disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality; or

   d any publication by Mr Bright of the letter referred to in Clause B above.

7 This Deed constitutes the sole and entire agreement between the parties relating in any way to the subject

matter hereof and no oral or written warranties, representations, guarantees or other terms or conditions of any nature not contained in this Deed shall be of any force unless they have been reduced to writing and executed by all parties and are expressed to be in modification of this Deed.

8 This Deed is subject to, and shall be governed by, the laws of the State of Queensland. The parties irrevocably submit to the jurisdiction of the Courts of Queensland in relation to any dispute which may arise concerning the contents of this Deed."

[9] Mr Bright wrote to the mediator, senior police and others re-agitating the matters the subject of the mediation and the Deed of Compromise by letter dated 12 October 2000. He continued to write lengthy letters to senior bank officers, police, public figures and others airing his grievances not just against the Bank but against other participants in the development project. He refers to his family and the distress that these matters have caused them. From his writings, including numerous pamphlets (exhibit 1), it is clear that he had come to regard the Bank as responsible for all of the misfortunes that had overtaken him since he embarked upon the land development at Belmont. He characterises the letter which the Bank provided to him in the terms set out in the Deed of Compromise as an acknowledgement of guilt by the Bank which in some way has given him new rights against the Bank. He wished to continue in his relationship with the Bank and wished to have assigned to him a new client relationship manager who knew nothing of the history of this matter.

[10] When the matter came before me on 25 May 2001 Mr Bright had accepted the benefits under the Deed - the $25,000 and the letter from the Bank which he has published widely. As I found on that occasion Mr Bright had not indicated at any time that he wished the court to set aside the Deed on any of the recognisable grounds of fraud, duress, *non est factum* or unconscionable conduct and the material did not suggest any basis for any such action.

[11] Since the order was made Mr Bright has continued in his campaign against the Bank. The material on this application reveals that Mr Bright has sent materials concerning the Bank and others associated with the failure of the subdivision to Mr David Pink who works for the Primary Industry Bank of Australia; Mr Norman Clarke, Convenor of Legacy Pensions Committee who was assisting Mr Bright's mother about her entitlement for a War Widow's Pension; officers of the Bank of Queensland; and staff at the Bank's solicitors. It is difficult to summarise the material produced by Mr Bright. It is extensive and often quite incoherent with a "stream of consciousness" air about it. It contains an illustrated sequence insulting of banks. The material is critical of certain named and unnamed members of the legal profession. Mr Bright annotated a copy of the Deed of Compromise letter which he sent to the Bank of Queensland which gives some flavour of the materia:

"LEARN THE TRUTH

> The Senior Credit Manager Chris Watts "your bank account is a bank circus, one we don't wish to be part of. If I am to be the clown a resolution will come via Bank Victim Associates – Association to gain an independent Bank Consumer Affair. Remember a $1 = 273 Yen to 57 Yen. 1973 to 1998. Like the Japanese, learn how to mediate a resolution. Is one Japanese worth 55 Australians?"

And at the end of the page:

> "PS. When your bank trust is broken by an incomplete and illegal bank loan agreement I trust that my solicitor who said "this is the best he could do". To accept $25,000 to admit bank liability and this confession of guilt. Who supports me, see over for details?"

Mr Bright's affidavit (in effect submissions) filed in response to this application refers to an engineer's report associated with the land development; the electrician's complaint against the head contractor via the police; a serious allegation against his former barrister; brief quotations from Mr Arch Bevis MHR "The Commonwealth Bank comes under his control", " This sounds like a conspiracy"; his accountant and others. In paragraph 20 Mr Bright writes:

> "If we are to assist the Commonwealth, the Courts and the Brisbane City Council stamp out crime, the *Vexatious Litigants Act* must be improved to protect bank customers' rights. To have some legal right to stand up against banks' complacency, neglect, misconduct, mismanagement and attempted cover up … I wish you [the court] to give me sufficient time to mount my argument and to also consider that with a simple subdivision we should have made $1.5 million profit but have subsequently lost $4.5 million. All I am asking for in view of the circumstances of my Senior Legal Counsel being charged with fraud, and no longer being allowed to practise as a barrister, that you give me at least one day in Court where I will prove beyond a shadow of a doubt that the Commonwealth Bank of Australia have a case to be answered.
>
> I believe my best results will come from you hearing my case, interviewing some 30 odd witnesses and taking special note of the experts in the Queensland Police Department involved in this matter."

[12] Mr Bright said he did not accept the order made on 25 May 2001 and that his then barrister did not act in his best interests. He was not present at court. He has not sought to have that order set aside.

[13] Clause 5 of the Deed of Compromise obliged Mr Bright (and the Bank) to keep confidential and not to disclose to any other person the contents of the Deed (save for the letter) and:

> "all books, documents and information made available to any party for the purposes of entering into [the] Deed or in the course of the performance of [the] Deed…".

Clause 2 contains an express acknowledgement of denial of liability by each party to the Deed and by cl 1 the payment of the sum of $25,000 to Mr Bright discharged the Bank from all claims and demands arising out of or relating to or incidental to the dispute between them.

[14] The pamphlet "How Can We Build Better, Friendlier Banks?" published and distributed by Mr Bright and/or his companies makes reference to the payment of $25,000 by the Bank to him in settlement of its "admitted liability". Other letters and circulars make similar references. It is clear from the passages in his affidavit set out above that Mr Bright, without commencing proceedings, wishes in the Bank's proceedings, to claim against the Bank for his losses.

[15] Mr Bain QC, for the Bank, in his written submissions contends that:

> "The publications made by the Respondents constitute, variously, libel of the Applicant, intentional interference in the Applicant's business, intimidation in breach of the Deed of Compromise …".

[16] In order to obtain an injunction an applicant has to prove that it possesses some legal right which "was either threatened or … had already been infringed and that the infringement was likely to be continued or repeated", Meagher, Gummow & Lehane at 394 *Equity Doctrines & Remedies*, 3rd Ed [2107], see also Spry *Equitable Remedies*, 5th Ed, quoted with approval by Chesterman J in *Kestrel Coal Pty Ltd v Construction Forestry Mining and Energy Union and Ors* [1999] QSC 150, unreported decision of 26 May 2000.

[17] The Bank has the contractual rights contained in the Deed of Compromise. These may be characterised as proprietary in nature and apt to be protected. There has been no attempt to identify the defamatory material in Mr Bright's voluminous writings and the courts have evinced no great enthusiasm for restraining defamation. There is no or little material to support intentional interference with the Bank's business – Mr Bright merely wants *his* interests respected. Some people are distressed at Mr Bright's conduct seen by them as obsessional and do not want to receive his material. However that does not amount to intimidation. So far as the Bank's contractual rights are concerned, damages (if they could be quantified and/or obtained) would be quite inadequate. If Mr Bright wants to be relieved of the obligations he assumed by signing the Deed of Compromise and accepting its benefits he must apply to have it set aside (and return the benefits) but, as I have commented above, lest he be encouraged, he has advanced nothing to suggest that there is any basis for a court to do so. Accordingly, the Bank is entitled to have its rights secured by the Deed of Compromise protected. The Bank has not chosen to proceed with a contempt application in respect of the 25 May 2001 order but that is not to say that it may not do so in the future if Mr Bright persists in conduct enjoined by the Deed.

[18] The orders are:

1. the respondents by themselves, their employees, agents or officers are restrained-

   (a) from sending any material whether in physical or electronic form which wholly or in part relates to any matter between the applicant and the respondents finally determined in the Deed of Compromise executed by the respondents on 11 October 2000;

   (b) making any assertion to any person about the applicant or any of its officers or employees, or about any rights or entitlements against the applicant, its officers or employees, or allegations of detriment occasioned to any of the respondents by any act or omission of the applicant, its officers or employees in relation to any of the subject matter of the Deed of Compromise (other than to a respondent or a legal adviser retained by a respondent);

   (c) making any assertion to any person in relation to the rights and entitlements determined by the deed of compromise other than in accordance with the Deed of Compromise;

   (d) taking any other action howsoever, and by whatsoever means, as regards any other person, including, but not limited to, any terms and mode of correspondence and communication, inconsistent with the terms of the Deed of Compromise.

2. The respondents pay the applicant's costs of and incidental to the application to be assessed.