SUPREME COURT OF QUEENSLAND

CITATION:	*Rodgers Family Investments P/L v ANZ Banking Group Ltd & Ors* [2003] QCA 216
PARTIES:	**RODGERS FAMILY INVESTMENTS PTY LTD** ACN 082 602 239 (applicant/appellant) **v** **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED** ACN 005 357 522 (first respondent) **JOHN RICHARD PARK AND DAVID LEWIS CLOUT AS JOINT AND SEVERAL RECEIVERS** (second respondent)
FILE NO/S:	Appeal No 8468 of 2002 SC No 352 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	30 May 2003
DELIVERED AT:	Brisbane
HEARING DATE:	22 May 2003
JUDGES:	Davies, Williams and Jerrard JJA Judgment of the Court
ORDER:	**Appeal dismissed with costs**
CATCHWORDS:	BANKING AND FINANCE – INSTRUMENTS – DEBENTURES – where second respondent receivers appointed by first respondent to appellant company pursuant to mortgage debenture – where second respondent sold business conducted by appellant – whether receivers should be removed – whether a declaration should be made that the receivership of the appellant is invalid
COUNSEL:	The appellant appeared on its own behalf I R Perkins for the respondents
SOLICITORS:	The appellant appeared on its own behalf Minter Ellison for the respondents

[1] **THE COURT:** On becoming aware that the second respondent (claiming to be receivers appointed by the first respondent pursuant to a mortgage debenture)

proposed selling the business of "internet service provider" conducted by the appellant under the name Rocknet, the appellant applied to the court for an injunction staying the sale. Prior to the application being heard it was significantly amended; in addition to seeking a stay of the sale the amended application sought the removal of the receivers and a declaration that "both the Respondent and the Second Respondent had/have no basis to proceed to receivership of the Applicant and that it is invalid, and that the Respondent has not conformed with the provisions of s 84 of the *Property Law Act*."

[2] The contract for sale of the business was dated 12 August 2002 and provided for completion 14 days after the date thereof. However the purchaser was anxious to settle prior to that. The application came on for hearing before White J on 16 August 2002. On that day the appellant filed a further affidavit by Roslyn Rodgers which raised factual allegations not contained in earlier material.

[3] There was some discussion before the judge at first instance as to how the application should be dealt with given the degree of urgency. Counsel for the respondents was initially concerned that his clients had no opportunity to answer the fresh allegations raised. That gave rise to some discussion as to whether the application for a stay could be determined in advance of the other issues raised by the application. Ultimately counsel for the respondents, according to his submission to this court, informed the judge his clients were happy for the whole of the application to be determined that day. There is a dispute between the appellant (now represented by Mrs Rodgers one of its directors) and the legal representative for the respondents as to what was decided on that issue. However, it is clear that the written outline submitted by counsel then appearing for the appellant dealt with all issues raised by the application, and all of those matters were dealt with in her Honour's reasons for judgment. In the circumstances there is no point in further considering the contention of Mrs Rodgers in this regard.

[4] White J dismissed the application and the contract for the sale of the business settled on 19 August. Mrs Rodgers quite correctly conceded in this court that the sale could not be undone and in consequence the only relief the appellant now contended for was a rehearing on the other issues raised by the application, namely the removal of the receivers and the granting of the declaration.

[5] In support of the appeal the appellant sought to rely on extensive new material. Objection was properly taken by the respondents to the receipt of that affidavit material, though the court allowed Mrs Rodgers to refer to it in the course of her oral submissions. That was done primarily with a view to ensuring that no injustice was done because the appellant was not legally represented.

[6] As already noted, given that the sale has now been completed, there is no point in considering the arguments in any greater depth.

[7] The removal of the receivers was sought on the basis their appointment was invalid because of the provisions of s 418(1)(b)(c), s 418A, s420A, s 423 and s 424 of the *Corporations Act* 2001. The learned judge at first instance, after considering the submissions made by counsel for the appellant, concluded that the receivers were not disqualified and held that their appointment was justified given the terms of the mortgage debenture. It is unnecessary now to consider disputed factual questions sought to be raised by the appellant. Mrs Rodgers admits there are no assets in the

company and it has other liabilities. There is no utility in this court further considering such issues.

[8] If the allegations about the respondent bank, advanced in the affidavit material filed and in the arguments from the bar table on the hearing of this appeal, are correct, (and those considerably expanded on what was in the affidavit material before the learned trial judge), then those matters are appropriate for proceedings other than an appeal from the decision of White J. This is simply because proof of the allegation by Mrs Rodgers that her signature was forged on the Mortgage Debenture which the bank registered and relied upon could not undo the sale which has already occurred of all of the appellant company's property of value, pursuant to the exercise of powers given in that document. Remedies for the wrong doing alleged lie elsewhere.

[9] It follows that the appeal should be dismissed with costs.