

# SUPREME COURT OF QUEENSLAND

CITATION: *Bank of Queensland Limited & Ors v Dodrill & Anor*  
[2011] QCA 235

PARTIES: **BANK OF QUEENSLAND LIMITED**  
ABN 32 009 656 740  
(first appellant)  
**JOHN RICHARD PARK AND KELLY-ANNE LAVINA  
TRENFIELD IN THEIR CAPACITY AS RECEIVERS  
AND MANAGERS OF MULHERN CONSTRUCTIONS  
PTY LTD**  
(second appellant)  
**MULHERN CONSTRUCTIONS PTY LTD  
(RECEIVERS AND MANAGERS APPOINTED)**  
ACN 060 410 102  
(third appellant)  
**v**  
**JOSEPH MICHAEL DODRILL**  
(first respondent)  
**JOHN ANTHONY DODRILL**  
(second respondent)

FILE NO/S: Appeal No 11990 of 2010  
SC No 9831 of 2010

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Orders

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 September 2011

DELIVERED AT: Brisbane

HEARING DATE: 11 March 2011

JUDGES: Margaret McMurdo P, Muir JA and Daubney J  
Judgment of the Court

ORDERS: **1. The first respondent, Joseph Michael Dodrill, pay to the first appellant, Bank of Queensland Limited, the amount of \$310,347.81 and interest of \$23,892.52.**  
**2. The second respondent, John Anthony Dodrill, pay to the first appellant Bank of Queensland Limited \$310,347.81 and interest of \$23,892.52.**

CATCHWORDS: EQUITY – GENERAL PRINCIPLES – PRIORITY AND NOTICE – PRIORITY – PRIORITY BETWEEN PRIOR LEGAL AND SUBSEQUENT EQUITABLE INTEREST – where the first appellant Bank claimed to be entitled to

surplus proceeds of sale of real property at Toowong held in trust by the respondents' solicitors – where the second appellant receivers claimed an entitlement to the proceeds in their capacity as receivers – where the respondent judgment creditors each claimed to be entitled to half of the moneys because of writs of execution registered over the land prior to its sale – where the respondents were declared to be beneficially entitled to the proceeds at first instance – where this Court set aside those orders and declared that the first appellant was entitled to the whole of the surplus proceeds of sale – where the respondents have filed an application for special leave in the High Court of Australia – where the appellants apply for an order for repayment of those proceeds – whether the respondents should each be ordered to repay their half of the proceeds of sale to the appellants – whether an order should be made for interest claimed

COUNSEL: A B Crowe SC, with B T Porter, for the appellants  
R Perry SC, with C Coulsen, for the respondents

SOLICITORS: Dibbs Barker for the appellants  
Lynch Morgan Lawyers for the respondents

- [1] **THE COURT:** On 17 June 2011, this Court allowed an appeal from a decision of a judge of the Supreme Court concerning a dispute over the entitlement to the balance proceeds of sale of two parcels of land which, at the time of the trial, had been held in trust by the solicitors for the respondents pending the Court's determination. The respondent judgment creditors each claimed to be entitled to half the fund. The first appellant, Bank of Queensland Limited, claimed an entitlement to the whole of the fund on the basis that the fund was subject to its charges under registered mortgages. The second appellant receivers, who had been appointed under the first appellant's mortgages, claimed an entitlement to the fund in their capacity as receivers.
- [2] At first instance, it was declared that each of the respondents was beneficially entitled to one half of the fund.
- [3] This Court ordered that the declarations and orders at first instance be set aside and it was declared that the first appellant is and was entitled to be paid the amount of \$620,695.63 from the surplus arising from the sale of the subject land in priority to the respondents. In other words, it was declared that the first appellant was entitled to the fund. The respondents have applied for special leave to appeal to the High Court of Australia against the decision of this Court. Their solicitors informed this Court that they would abide the order of the Court and that the respondents did not wish to be heard further on the appellants' application.
- [4] Counsel for the appellants explained in his written submissions why it is reasonable for this Court to conclude that if the fund is no longer held by the solicitors for the respondents on the respondents' behalf, it has been paid to each respondent in equal shares.

- [5] Payment of the sum of \$620,695.63 has been demanded of the respondents by the appellants. The demand has not been complied with and no reason for non-compliance has been given.
- [6] Consistently with this Court's declaration, the appellant Bank is entitled to an order that it be paid the sum of \$620,695.63. An application for repayment was included in the Notice of Appeal but an order for repayment was not made by this Court when it determined the appeal.
- [7] The appellants have now made further application for an order against each respondent that he pay half of the above sum together with interest thereon at the default rate of ten per cent from 13 October 2010 until the date of an order requiring payment to the appellant receivers. The appellants have the same representation and have no competing interests and the respondents do not submit that there is a reason why the orders sought should not be made. However, as this Court's decision is the subject of an application for leave to appeal, and as the receivers, presumably, are the agents of a company in receivership, it is considered preferable that the fund be paid to the appellant Bank. That will ensure that the respondents are not at any risk of not recovering any moneys paid by them in the event that they obtain leave and succeed on the High Court appeal.
- [8] We also consider appropriate that an order be made for interest as claimed in the appellants' draft order provided to the Court on 8 September 2011. Under it interest is payable from 13 October 2010 to 22 July 2011. That will recognise that the application could have been made or renewed in court when this Court's orders were being pronounced.
- [9] For the above reasons, it is ordered that:
- (a) The first respondent, Joseph Michael Dodrill, pay to the first appellant, Bank of Queensland Limited, the amount of \$310,347.81 and interest of \$23,892.52; and
  - (b) The second respondent, John Anthony Dodrill, pay to the first appellant Bank of Queensland Limited \$310,347.81 and interest of \$23,892.52.