

SUPREME COURT OF QUEENSLAND

CITATION: *Bowen Central Coal Pty Ltd v Aquila Coal Pty Ltd & Anor*
[2011] QCA 336

PARTIES: **BOWEN CENTRAL COAL PTY LTD**
ACN 107 198 676
(appellant)
v
AQUILA COAL PTY LTD
ACN 097 801 940
(first respondent)
EAGLE DOWNS COAL MANAGEMENT PTY LTD
ACN 107 199 619
(second respondent)

FILE NO/S: Appeal No 8971 of 2011
SC No 6641 of 2011

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Judgment delivered on 24 November 2011
Further Order delivered on 24 November 2011

DELIVERED AT: Brisbane

HEARING DATE: 24 November 2011

JUDGE: Fraser JA

FURTHER ORDER: **1. An order is made in terms of paragraph 1(a) through to (d) inclusive of the draft order handed up and initialled by Fraser JA.**

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – OTHER MATTERS – where the primary judge made a non-publication order with respect to a number of documents before the Court – where the parties sought orders protecting the confidentiality of similar material where it appears in the appeal record – where the respondent sought a non-publication order with respect to two paragraphs in the reasons for judgment delivered on 24 November 2011 – whether a non-publication order should be made

COUNSEL: A Pomeranke for the appellant
D J Butler for the first respondent
No appearance by the second respondent

SOLICITORS: Clatyon Utz for the appellant
Mallesons Stephen Jaques for the respondent
No appearance by the second respondent

FRASER JA: In this matter, the Court was constituted by myself, Justice White and Justice Margaret Wilson.

The orders of the Court are:

1. Appeal allowed with costs.
2. The orders numbered 1 and 4 made in the Trial Division on 6 September 2011 are set aside.
3. The first respondent's application for an injunction is dismissed, with costs.

I publish the separate reasons for judgment of each member of the Court.

...

FRASER JA: An application has been made to the Court for a non-publication order in relation to two paragraphs of the judgment of the Court of Appeal that was handed down this morning. In the course of debate it became clear, and indeed I think so much was acknowledged on behalf of the applicant, Aquila Coal Pty Ltd, that the information in those two paragraphs is already published in the primary judgment which was the subject of the appeal. That primary judgment has been publicly available since the date it was given, which was the 6th of September 2011.

No submission has been made which explains why that material was or could remain confidential. Furthermore, the submission was premised on the proposition that the information would, at some point, have to be disclosed to the market by Aquila Coal Pty Ltd's parent company, which again rather suggests that it should not be kept private.

In those circumstances, I would not make a non-publication order in relation to the two paragraphs of the judgment of the Court.

The other orders which I have been asked to make about non-publication concern material which was kept confidential by the primary judge, or which is in the appeal record and reflects material which was kept confidential by the primary judge. I am prepared to make those other orders.

I will make an order and I do make an order in terms of paragraph 1(a) through to (d) inclusive of the draft order that has been handed up to me, which I will initial and place with the papers.