

CITATION: CGB (No 2) [2016] QCAT 89

PARTIES: CGB

APPLICATION NUMBER: GAA12185-15

MATTER TYPE: Guardianship and administration matters for adults

HEARING DATE: 7 April 2016

HEARD AT: Southport

DECISION OF: **Member Joachim**

DELIVERED ON: 24 May 2016

DELIVERED AT: Brisbane

ORDERS MADE: **ADMINISTRATION**

1. **The appointment of the Public Trustee of Queensland as administrator for CGB for managing all financial matters except:**
 - (a) **Industrial Property Burleigh Heads, a mine, a quarry, Plant and Equipment located on the adult's property and the business entity, CGB's quarries, and account number XXXXXX at the Bank of Queensland up to \$800,000, for all of which SBK is appointed administrator is continued.**
2. **The Tribunal directs the administrator SBK to provide quarterly accounts to the Public Trustee of Queensland and the Tribunal with the next accounts being for the period 01/01/2016 to 31/03/2016 by 21 April 2016.**
3. **The administrator, SBK, is to arrange for the accounts to be audited every six months by Vincent's Chartered Accountants within one (1) month of the account period.**
4. **The Public Trustee of Queensland is to approve the reasonable accounting expenses of SBK.**

5. These appointments remain current until further order of the Tribunal. These appointments are reviewable and are to be reviewed in two (2) years.

NOTICE OF INTEREST IN LAND

6. That before 7 July 2016 the administrator must:

- (a) Search the records of the Registrar of Titles to identify any property registered in the adult's name.

- (b) Give the registrar of titles a copy of this order and a notice to the registrar advising that any interest in property held by the adult is subject to this order.

- (c) Give to the Tribunal:

- (i) a copy of the "Lodgement Summary Form" from the Titles registry confirming the notice has been lodged for each property held by the adult; and

- (ii) a copy of the current title searches.

7. If the ownership of any property of the adult changes in any way or the adult acquires an interest in another property the administrator must, within fourteen (14) days of such changes:

- (a) give a copy of this order to the Registrar of Titles and

- (b) give a notice to the Registrar about the changes or the adult's interest in another property.

ENDURING POWER OF ATTORNEY

8. Any purported Enduring Power of Attorney for CGB is overtaken by the making of these appointments and, in accordance with s22(2) of the *Guardianship and Administration Act 2000* can no longer be acted upon to the extent that these appointments have been made.

DIRECTIONS

9. Any party wishing to apply to the Tribunal for cost must provide a written submission to the Tribunal and other active parties by:

4:00pm, 22 April 2016.

10. Any active party who wishes to respond to a costs submission must provide a written submission to the Tribunal and other active parties by:

4:00pm, 29 April 2016.

11. The Tribunal will decide any application for costs on the basis of the written submissions without further hearing.

Not before 4:00pm, 27 May 2016.

CATCHWORDS:

GUARDIANSHIP AND ADMINISTRATION – REVIEW OF THE APPOINTMENT OF AN ADMINISTRATOR – where adult is self-made millionaire with extensive business interests – where adult had let businesses run down – where administrator had spent significant funds to put business on proper footing – where financial plan lacking a budget for personal income and expenses – where Tribunal initiated a review of administrator’s appointment – where adult’s daughter has some concerns about administration – where Public Trustee and Vincents Chartered Accountants support administrator SBK – whether administrator remains competent and appropriate

Guardianship and Administration Act 2000
(Qld), s 31

REPRESENTATIVES:

DAJ represented by Mr D Morgan of Counsel instructed by Minter Ellison.
SBK represented by Mr G Radcliff of Counsel instructed by Cooper Maloy Legal.

REASONS FOR DECISION

- [1] CGB is a self-made millionaire. He is 82 years of age and lives in a residential aged care facility in South-East Queensland. His financial interests include an accommodation bond as well as a quarry, a mine and large amounts of cash in bank accounts. He also owns industrial properties.
- [2] On 23 April 2015 the Tribunal appointed the Public Trustee of Queensland as CGB's administrator for managing all financial matters except various properties and investments for which SBK was appointed as administrator. These appointments continued earlier appointments that were made in 2014. Part of the orders made in 2015 included directions that the administrators are to provide an updated financial management plan to the Tribunal within six months. When the Tribunal received SBK's financial management plan it was not satisfied as to the viability of the approach being taken and it did not include a budget. As a result, the Tribunal initiated a review of the appointment of the administrators.
- [3] When the Tribunal conducts a review it does so under s 31 of the *Guardianship and Administration Act 2000* (Qld) (GAA Act). This requires that at the end of the review the Tribunal must revoke its appointment unless satisfied it would make an appointment if a new application was received. Section 31 also provides that an administrator can only be removed if another person is more appropriate for appointment, or the current administrator is no longer competent.
- [4] Following the hearing in April 2015 the Tribunal has issued a range of other orders. These include the appointment of a separate representative for CGB for the possibility of DNA testing, consideration of an application by Sylvia Persson to become an active party, and an application to give directions to the appointed guardian. There was also directions made in relation to an appeal by Sylvia Persson when she was not made an active party.
- [5] Further directions were given in January 2016 pertaining to the administration. These directions joined DAJ, DAJ having been identified as a daughter of CGB. The directions also included that SBK provide submissions to the Tribunal about his competence and that DAJ and the Public Trustee are to provide a response to the application for review of the appointment of SBK.
- [6] On 13 January 2016, DAJ advised the Tribunal Registry that she was CGB's daughter and this was confirmed by a DNA test. This was subsequently verified by the separate representative of CGB by letter to the Tribunal on 20 January 2016. In her telephone conversation to the Registry on 13 January 2016, DAJ reported she had serious concerns about the management of her father's finances without giving any specifics. SBK provided an affidavit to the Tribunal dated 17 February 2016 in which he indicated that upon it being ascertained that DAJ was CGB's daughter an informal meeting took place at the office of Cooper

Maloy Legal, and was attended by various interested parties including SBK, and Gary Radcliff of Counsel.

- [7] Subsequently, according to SBK a meeting took place in Lismore, in which SBK outlined the way in which he manages CGB's affairs and the range of properties and businesses that were being managed. SBK's diary note of that meeting indicates that he invited DAJ to visit the various properties provided sufficient notice was given.
- [8] SBK submitted he is bound to a large extent by confidentiality and client privilege. He advised, to the extent that he could, that he would keep DAJ informed and that he has gone about as far as he could without breaching CGB's confidences in respect of outlining CGB's affairs and how they are managed.
- [9] SBK stated he has been informed that DAJ had a range of telephone conversations with various people associated with CGB's business and visited sites of CGB's industrial properties without notice being given to him. As part of these visits she apparently enquired of a tenant in relation to the terms of the lease and the rent.
- [10] SBK was of the view that CGB would be appalled if he was to disclose any more information than he had presently done so in relation to his financial affairs. DAJ advised the Tribunal that after reviewing files that she had concerns about SBK seeking to sell a significant land asset without due diligence, and concerns regarding operational losses of the business.
- [11] On 15 March 2016 DAJ asked SBK by way of email for a range of information and documents relating to invoices, tenancies, business plans and audit reports. She subsequently indicated to the Tribunal that she would consider making an application to the Tribunal to become the administrator for her father. DAJ did not submit any application.
- [12] Prior to the hearing, SBK submitted a lengthy report outlining the various activities he was undertaking. The Tribunal also received an updated budget from him and the Public Trustee.
- [13] The reason this review was initiated was because a Tribunal Member identified concerns with the financial management plan submitted by SBK. This plan omitted a budget and the Member was concerned about whether there was adequate provision for funds for CGB's future needs. The administrator had engaged Fraser Wealth Management to develop a plan and stated that he was not aware that the budget was not included in those reports.
- [14] Section 31 of the GAA requires me to consider afresh the question of CGB's capacity, whether there is a need to appoint an administrator, and if so, who that should be.
- [15] CGB had a separate representative, Mr Peter Sheehy, Solicitor appointed by the Tribunal. SBK was represented by Gary Radcliff of Counsel,

instructed by Cooper Maloy Legal. DAJ was represented by Daniel Morgan of Counsel, instructed by Minter Ellison. Prior to the hearing represented parties had been given leave to be represented.

Does CGB have capacity to manage his extensive financial interests?

- [16] Mr Sheehy visited CGB in the days leading up to the hearing and provided a report to the Tribunal. Mr Sheehy concluded that CGB had no reportable view or wish about the continued involvement of SBK. Mr Sheehy gave the impression that the simple concepts he was attempting to discuss were difficult for CGB to process. Attempting to speak to him in very simple terms was not productive in obtaining any meaningful responses.
- [17] This is consistent with the earlier health professional reports which indicated that CGB had a dementing illness. He is unable to indicate the extent of his assets or expenses, and had in the past been impulsive and chaotic in decision making and had not responded to major business decisions requiring his attention.
- [18] All adults in Queensland are entitled to the presumption that they have capacity. That presumption can be rebutted on evidence. The evidence before the Tribunal is that CGB is unable to understand information on which to base decisions, and to make those decisions understanding the consequences of those decisions. He is barely communicative. I am satisfied that the presumption of capacity has been rebutted and find that CGB has impaired decision making capacity for his financial matters.

Is there a need for an administrator?

- [19] CGB's financial affairs are very complex. The Public Trustee are holding approximately \$790,000.00 in cash in various forms for CGB. SBK was managing quarry and mine businesses and industrial property at Burleigh Heads. The net cash flow from the businesses is projected to be just in excess of \$200,000.00.
- [20] Clearly, there is a need for an administrator. This is further exemplified in the financial management plan prepared by Fraser Wealth Management in January 2015 for CGB. This outlines the various assets owned by CGB which include two properties at Burleigh Heads, a mine and a quarry. Taken together it is estimated that those assets could be in the vicinity of \$30 million, as there are some current values unknown.
- [21] CGB's business interests, as well as the funds held by the Public Trustee, draw me to the conclusion that there is a need for decisions about financial matters and without an appointment CGB's needs will not be adequately met, nor his interests adequately protected.

Who should be appointed administrator?

- [22] This review has been undertaken because the Tribunal was not satisfied with the material provided by SBK, which together with the Public

Trustee's material, left the Tribunal unsure of how CGB's ongoing needs would be met given that his businesses were running at significant losses. As noted above, no budget had been provided.

- [23] Prior to the hearing SBK provided a budget. The Public Trustee representative at the hearing advised that SBK's financial documents, and the Public Trustee's financial documents should be read together to obtain a full understanding of CGB's income and expenses.
- [24] Taken together, the Public Trustee material shows a deficit in the order of \$160,000.00, and SBK's material shows a surplus of \$201,812.00. This surplus has been possible as a result of SBK's activities in putting the businesses on a proper business footing.
- [25] SBK provided an extensive affidavit sworn on 7 March 2016 in which he detailed his activities. He noted that he had been CGB's accountant and business advisor for some 25 years. He noted that when he commenced in his role as administrator he acknowledged that he had a fiduciary duty to CGB and could not operate the business in the same fashion and was not prepared to take the same risks. As a result of the business operations of CGB, the businesses needed to be regularised to such an extent so that they could continue.
- [26] CGB's various business interests include industrial property, a mine and a quarry. There were a number of ongoing issues and disputes with various agencies including rates that were owed, enforcement notices in relation to work required and complaints by various government bodies. Long term tenancies needed to be established and considerable work was required. There remains a current rates problem with the local Council, which is currently under negotiation.
- [27] In order to keep the businesses viable and secure a long term income stream for CGB, SBK had spent significant funds including on the quarry some \$287,000.00; on the mine \$57,000.00; and on the industrial properties some \$262,000.00.
- [28] SBK acknowledges there has been a decline in CGB's operating funds since his appointment. He considered the expenditures he made to be justified and appropriate. Attempts are being made to auction one property. It is valued at approximately \$11,000,000.00.
- [29] SBK and the Public Trustee have both indicated they are willing to be appointed again. There are no other nominees before the Tribunal, DAJ having decided not to proceed with an application.
- [30] It is pertinent at this point to note however, that the Public Trustee of Queensland are the appointed administrators for all financial matters with the exception of the various business interests of CGB. SBK has been required under the order to provide quarterly accounts to the Public Trustee, and to arrange quarterly accounts to be audited by Vincents Chartered Accountants.

- [31] Vincents, on 24 November 2015, reported that they have obtained sufficient and appropriate information to provide a basis for their audit opinion, and that they have concluded that the administrator is managing the accounts in the best interests of CGB. This is not the first time that Vincents have reached this view.
- [32] The Public Trustee does not propose an alternative administrator to SBK. The Public Trustee has formed the view from the information available to him that SBK has conducted himself in a manner consistent with that of a competent financial administrator.
- [33] In relation to the industrial properties, the Public Trustee submitted that the actions taken by SBK in respect of the local Council rates and the tenancies have appropriately reduced CGB's exposure to financial risk. The Public Trustee have also formed that view in relation to the mine.
- [34] Submissions received by DAJ prior to the hearing indicated that she did not consider the financial decisions being made by SBK revealed ongoing competence for the role of the administrator. She proposed that with the aid of a professional support group she should assume the role of administrator for CGB. At the hearing, however, she indicated to the Tribunal that she did not wish to take on this role. She did, however, through her Counsel indicate that she had a strong desire to be kept fully informed of the actions of the administrators.
- [35] DAJ's legal representatives expressed that their client had some concerns regarding the administration but she does not wish to be responsible for the administration herself. Counsel for DAJ indicated that DAJ has lost confidence in the administrator's ability to manage. Concerns included the absence of a budget, whether land valuations should be in the Public Trustee's report, concerns that the money for CGB's ongoing care will run out, and there should be a proper valuation of the shares in Global Sandstone company. A budget has now been provided which negates some of these concerns. I do not share her concerns about the other matters.
- [36] I am satisfied that the actions of SBK and the Public Trustee in the administration of CGB's financial affairs are appropriate and they remain competent to be administrators.
- [37] I will continue the appointment of the Public Trustee of Queensland as administrator for all financial matters except the industrial property, the mine, and the quarry owned by the adult, Plant and Equipment located on the adult's property and the business entity, CGB's quarries, and account number XXXXXX at the Bank of Queensland up to \$800,000, for all of which SBK is appointed administrator.
- [38] I will direct him to provide quarterly accounts to the Public Trustee of the Queensland and the Tribunal with the next accounts being due for the period 1 January 2016 to 31 March 2016, by 21 April 2016.

- [39] SBK is to arrange for the accounts to be audited every six months by Vincents Chartered Accountants within one month of the account period. The Public Trustee is to approve the reasonable accounting expenses of SBK. These appointments are reviewable and are to be reviewed in two years.
- [40] I will also make the usual notice of interest in land orders in relation to the administrator doing a search of the Registrar of Titles. Any purported Enduring Power of Attorney for CGB is overtaken by the making of these appointments.
- [41] Towards the end of the hearing, parties indicated they wished to make application for costs. I made directions that submissions be provided by 22 April 2016 and 29 April 2016. The orders as to costs will be made separately and written reasons will be provided for those decisions.