

SUPREME COURT OF QUEENSLAND

CITATION: *Aqwell P/L v BJC Drilling* [2002] QSC 362

PARTIES: **AQWELL PTY LTD (ACN 007 726 981)**
(applicant)
v
BJC DRILLING SERVICES PTY LTD (ACN 086 032 742)
(respondent)

FILE NO: 7523 of 2002

DIVISION: Trial Division

DELIVERED ON: 6 November 2002

DELIVERED AT: Brisbane

HEARING DATE: 1 November 2002

JUDGE: Mackenzie J

ORDER: **Orders as in Schedule 1 to these reasons.**

COUNSEL: C Francis for the applicant
W Allen for the respondent
D Tucker for the receivers

SOLICITORS: Porter Davies for the applicant
Whitman & Co for the respondent
Tucker & Cowan for the receivers

- [1] **MACKENZIE J:** On 20 September 2002, following a previous appearance on 10 September 2002 and delivery of reasons on 19 September 2002 in connection with that application, when receivers were appointed to a joint venture for limited purposes relating to preparing an independent accounting of it, the parties appeared before me again. At the time of both appearances, an order of Muir J made on 28 August 2002 was in force.
- [2] On 20 September 2002, I gave a clear indication of the contents of the order I proposed to make in several respects, but, largely because of the lateness of the hour, and the need to achieve a workable form of order, the parties were sent away on my understanding that they would prepare an agreed draft for endorsement by me.
- [3] On 1 November, 2002, having been advised that no draft had been agreed upon and that there were further disputes about the obligations of the parties, I heard the parties again. Two separate forms of orders were proposed, to which I have given consideration. The receivers also appeared to make submissions as to provisions required to safeguard their position.

- [4] To achieve the objectives inherent in my expressed conclusions on 20 September 2002 and other improvements suggested subsequently, I make the orders annexed to these reasons. I have not revoked the order made by Muir J in case doing so may have unforeseen consequences. However, the orders annexed extends the obligations of the respondent and where the obligations in the orders made today have that effect, they operate to their full extent notwithstanding that the obligation under Muir J's order may not be as extensive, or perhaps, due to a possible ambiguity about incurring obligations, arguably more onerous.
- [5] I make the orders in Schedule 1 to these reasons.

Schedule 1

It is ordered that

1. All moneys received by the respondent, whether before, on or after 27 August 2002 on behalf of the joint venture conducted between the applicant and the respondent since 28 February 2001, and all moneys received in relation to the three drills described in Exs "PDR3", "PDR4" and "PDR5" to the affidavit of Peter Davis Rogers filed on 26 August 2002 ("the drills"), be deposited into the bank account 2813 10214788 at the Commonwealth Bank,, Maitland in the state of New South Wales, in the name "BJC Drilling Services Pty Ltd - Aqwell Pty Ltd."
2. The respondent not contract for material or services in excess of \$10,000 for a single item or single contractor so as to impose any obligation on the applicant under the Joint Venture Agreement exhibited in the affidavit of Peter Davis Rogers filed on 26 August 2002 or otherwise incur any legally enforceable obligation to a third party or third parties exceeding \$10,000 in respect of the joint venture or the drills without giving 3 days prior notice in writing to the applicant's solicitors, or, unless the court otherwise orders.
3. Payments shall not be made from the bank account referred to in para 1 hereof except in accordance with para 5 of this order or para 11 of the order made on 19 September 2002 and amended by this order.
4. The present signatories on behalf of the applicant and the respondent each take all necessary steps forthwith to terminate their own authority to be signatories to, and cause the receivers to be authorised as the only signatories to, the bank account referred to in para 1 hereof and to be authorised to sign cheques to effect any payments referred to in para 3 hereof.
5. Before any payment is made from the bank account referred to in para 1 hereof:
 - (a) the respondent shall present, as far as possible contemporaneously, to each of the applicant and the receivers a photocopy of each invoice in respect of the drills together with complete material supporting such invoice;
 - (b) such presentation shall be deemed to occur by delivery by the respondent's solicitors to the applicant's solicitors and to the receivers of the documents referred to in (a) hereof.
6. At any time after 48 hours have elapsed from presentation of the documents referred to in para 5 hereof to the receivers, the receivers may, after having regard to any representations made by the applicant or the respondent to them prior to the payment being made, make a payment relating to the invoice if, in the opinion of the receivers, it is appropriate to make that payment. For the purpose of calculating the period of 48 hours, time elapsing on a Saturday, a Sunday, or a public holiday at the place of business of the receivers shall be disregarded.
7. Subject to (c), payment of debts or outgoings which were incurred in respect of activities of the joint venture or in relation to the drills ("activities") shall be governed by the following:
 - (a) If the activities occurred prior to 27 August 2002, payment shall be made from moneys received, whether before, on or after 27 August 2002 in respect of activities which occurred prior to 27 August 2002;
 - (b) If the activities occurred on or after 27 August 2002, payment shall be made from moneys received in respect of activities which occurred on or after 27 August 2002;
 - (c) If moneys available to make payments in either of the cases referred to in paras (a) or (b) are insufficient, the receivers have liberty to apply to the court for further directions.

8. The order made on 19 September 2002 be varied by adding the following orders:
 - “9. The respondent forthwith deliver to the receivers, from time to time as requested, all income invoices issued by, and/or relating to, the joint venture and the drills (including but not limited to the income invoices for the months of September and October 2002).
 10. The powers of the receivers be extended to include those powers contained in s 420(2)(p),(q) and (r) of the *Corporations Act* 2001 (Cth).
 11. The receivers be entitled to reasonable remuneration in accordance with the hourly rates set out in the document headed Clout & Associates Schedule of Hourly Rates as at 1 August 2002, annexed hereto, and outlays, including the costs of and incidental to appearing in this application on 1 November 2002, and to deduct the same, with priority, from any moneys received into the bank account referred to in para 9(b) of the affidavit of Craig Robert Hausler filed on 26 August 2002.”
9. Each party have liberty to apply upon giving 7 days written notice to the other.
10. In this order, the term “joint venture” means the arrangements and dealings between the parties constituted by a Deed of Sale and Purchase dated 28 February 2001, an Option to Purchase Deed dated 4 April 2001 and a Joint Venture Agreement dated 30 April 2002.
11. Nothing in this order or the order dated 19 September 2002 as amended by this order imposes any personal liability upon the receiver for any debts or claims of the joint venture, the applicant or the respondent.
12. The respondent pay the applicant’s costs of and incidental to the application to be assessed.