

# SUPREME COURT OF QUEENSLAND

CITATION: *ASIC v Groundhog Developments Pty Ltd & Ors (No 2)*  
[2011] QSC 330

PARTIES: **IN THE MATTER OF: GROUNDHOG  
DEVELOPMENTS PTY LTD ACN 095 870 545**  
**AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION**  
(applicant)  
v  
**GROUNDHOG DEVELOPMENTS PTY LTD  
ACN 095 870 545**  
(first respondent)  
and  
**MALCOLM WAYNE ANDREW**  
(second respondent)  
and  
**ENTERPRISE MANAGEMENT SYSTEMS  
(AUSTRALIA) PTY LTD  
ACN 094 252 632**  
(third respondent)  
and  
**MAUREEN CATHERINE BUCKETT**  
(fourth respondent)

FILE NO/S: S 4772/01

DIVISION: Trial

PROCEEDING: Application

ORIGINATING  
COURT: Supreme Court of Queensland

DELIVERED ON: 9 November 2011

DELIVERED AT: Brisbane

HEARING DATE: On the Papers

JUDGE: Dalton J

ORDER:

- 1. Remuneration and expenses of the liquidators are approved in the amount of \$51,892 up to and including 8 October 2011.**
- 2. Remuneration and expenses of the liquidators are allowed in a further amount of \$6,224.45 in concluding the winding up.**
- 3. The liquidators may pay any of the amounts mentioned in orders 1 and 2 above from the funds they hold on behalf of the first and third respondents**

**in satisfaction of their remuneration and expenses.**

COUNSEL: K E Downes for the applicant  
 No submissions from the first respondent  
 No submissions from the second respondent  
 No submissions from the third respondent  
 No submissions from the fourth respondent  
 No submissions from ASIC

SOLICITORS: Blake Dawson for the applicant  
 No submissions from the first respondent  
 No submissions from the second respondent  
 No submissions from the third respondent  
 No submissions from the fourth respondent  
 No submissions from ASIC

- [1] **DALTON J:** This matter came before me on the civil list. It was an application in respect of a proposed distribution by the liquidators of the first respondent, and an application for approval of remuneration of those liquidators to the date of the application. Subsequently to delivering my judgment in the matter, the liquidators have provided affidavit material and submissions seeking further approval for remuneration and expenses incurred subsequent to the application which first came before me.
- [2] The facts of the matter and the relevant law are set out in my earlier decision. I will not repeat them. I am satisfied that the claim with which I am dealing is limited to matters which might legitimately be claimed in circumstances where the liquidators were administering the trust property held by the first respondent – see [11] of my earlier decision.
- [3] The liquidators claim an amount of \$24,304.50 in respect of remuneration for work carried out to date and ask that they be allowed a maximum of \$2,964.60 in respect of further remuneration to complete the winding up of the company. I allow the second amount which the material shows is reasonable, it is for a maximum of 12.4 hours to complete the distribution to claimants and finalise matters relating to the monies which the company holds on trust.
- [4] I allow \$11,897 in respect of the first item. As noted in my judgment delivered 6 September 2011, time spent preparing material for the main application was extraordinary and unjustified. Not only that, but the affidavit material produced was not sufficient to enable me to understand the work performed for the purpose of determining proper remuneration for the liquidators. This necessitated the liquidators filing further affidavits, with leave, after the application was heard. I disallow an amount of \$12,275.40 in the present claim because it relates to the preparation of this extra material. The amount allowed in my 6 September 2011 judgment was an amount which was proper and reasonable to have performed the legal and associated tasks involved in applying for remuneration. No further amount ought to be allowed in that regard. The amount of \$12,275.40 is in effect money spent to correct inadequacies in work for which proper remuneration has already been allowed. The amount has been calculated using the schedule headed, “Deatil [sic] of work performed for the period 7 June 2011 to 10 October 2011” which is part of exhibit IRH-34 to the affidavit of the liquidator sworn 11 October

2011. I have disallowed the line items between \$346 (14.06.11) and \$1557 (inclusive), together with an amount of \$730 as an apportionment of the line item, "Attendance at Court, discussion with Kevin Holzapfel" re work required re request from Judge. I have also deducted an amount of \$132.80 in respect of preparation of BAS and reconciliations. This is in line with my earlier judgment where I noted that had the liquidation been performed in a timely fashion these expenses would not have been incurred because the company would have been wound up long ago.

- [5] In addition, the liquidators claim amounts of \$52,417.86 in respect of expenses incurred and an allowance of up to \$3,259.85 in respect of expenses yet to be incurred in concluding the winding up. Again, I allow the second amount as reasonable given what has been sworn by the liquidator. I deduct an amount of \$12,423 from the former amount. This amount is the total of legal fees charged by the liquidators' solicitors between 17 June 2011 and 23 June 2011 in respect of providing the further affidavit material required to assess whether the amounts claimed in the original affidavit for remuneration and disbursements were reasonable and proper. Like the liquidators' fees disallowed above, these charges are in respect of bringing material previously filed to a suitable standard, an allowance was made in my judgment of 6 September 2011 for the reasonable cost of doing that.