

SUPREME COURT OF QUEENSLAND

CITATION: *In the matter of Bexalaw Pty Ltd (in liq) (No 2)* [2018] QSC 155

PARTIES: **GERALD THOMAS COLLINS AND MATTHEW LESLIE JOINER AS JOINT AND SEVERAL LIQUIDATORS OF BEXALAW PTY LTD (IN LIQUIDATION) ACN 075 575 209**
(applicants)

v

BEXALAW PTY LTD (IN LIQUIDATION) ACN 075 575 209
(first respondent/not a party to proceedings)

ANTONY TALBOT HUGHES
(second respondent)

SONTEL PTY LTD ACN 105 098 762
(third respondent)

JULIE DOBSON
(fourth respondent)

DEPUTY COMMISSIONER OF TAXATION
(fifth respondent)

FILE NO: No 6527 of 2017

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 5 July 2018

DELIVERED AT: Brisbane

HEARING DATE: 5 July 2018

JUDGE: Davis J

ORDER: **I declare that:**

1. The applicants are entitled to remuneration in the amount of \$152,181.70 being the sum retained by them in accordance with the order of 9 February 2018.

2. The applicants are entitled to distribute the sum of \$152,181.70 to themselves in payment of that remuneration.

CATCHWORDS: CORPORATIONS – WINDING UP – LIQUIDATORS – REMUNERATION – IN VOLUNTARY WINDING UP – where liquidators were previously authorised to retain funds on account of remuneration pending determination of their entitlement to those funds – whether the liquidators are entitled to the funds

13 Coromandel Place Pty Ltd v CL Custodians Pty Ltd (in liq)

(1999) 30 ACSR 377, cited
Erskine v Elin Media Partners Pty Ltd [2016] VSC 493, cited.
Glazier Holdings Pty Ltd (in liq) v Australian Mens Health Pty Ltd (in liq) [2006] NSWSC 1240, cited
In the matter of Bexalaw Pty Ltd (in liq) [2018] QSC 13, cited
Re Sutherland; French Caledonia Travel Service Pty Ltd (in liq) [2003] NSWSC 1008, cited

COUNSEL: Mr C R Melrose (solicitor) for the applicants

SOLICITORS: Gadens Lawyers for the applicants

- [1] Bexalaw Pty Ltd (in liquidation) (Bexalaw) was the trustee of the Gladstone Unit Trust. Although Bexalaw was, upon its being placed in liquidation, removed as trustee of the trust, it subsequently received a significant sum of money which was undoubtedly part of the fund of the Gladstone Unit Trust.
- [2] Various claims were made upon the money and Gerald Thomas Collins (Mr Collins) and Matthew Leslie Joiner (Mr Joiner), the liquidators of Bexalaw, made an application for directions as to the distribution of the money. I gave directions on 9 February 2018.¹
- [3] One of the directions sought was to authorise the payment of \$152,181.70 to Messrs Collins and Joiner as their remuneration in administering the assets held on trust.
- [4] There is no doubt that the liquidators of a corporate trustee are entitled to be indemnified from trust assets for remuneration and expenses, for identifying and recovering trust assets, realising trust assets and protecting those assets.² However, it was apparent from the material before me that Bexalaw's commercial activities were not confined to being the trustee of the Gladstone Unit Trust. Bexalaw was the trustee of other trusts and had creditors in its own right. It followed then that the right of indemnity of Messrs Collins and Joiner against the trust would not be in relation to the entire remuneration and expenses relating to the winding up of Bexalaw but would be limited to remuneration and expenses which related to the administration of the trust.³

¹ *In the matter of Bexalaw Pty Ltd (in liq)* [2018] QSC 13.

² *13 Coromandel Place Pty Ltd v CL Custodians Pty Ltd (in liq)* (1999) 30 ACSR 377 at 384.

³ *Re Sutherland; French Caledonia Travel Service Pty Ltd (in liq)* [2003] NSWSC 1008; *13 Coromandel Place Pty Ltd v CL Custodians Pty Ltd (in liq)* (1999) 30 ACSR 377 at 385; *Glazier Holdings Pty Ltd (in liq) v Australian Mens Health Pty Ltd (in liq)* [2006] NSWSC 1240 at [43]; *Erskine v Elin Media Partners Pty Ltd* [2016] VSC 493

[5] It was not clear on the material before me whether the remuneration claim of \$152,181.70 related solely to the administration of the trust. Therefore, in order to preserve the priority which Messrs Collins and Joiner enjoyed while their final entitlement to the money could be determined, I authorised them in these terms:

“(a) To retain the sum of \$152,181.70 on account of their remuneration in administering the assets held on trust pending determination of the applicant’s entitlement to that money.”

[6] Application has now been made:

(i) to fix the remuneration at \$152,181.45; and

(ii) for a direction that that sum be paid from the money held on trust.

[7] In support of the present application, Mr Collins has sworn an affidavit. He exhibits to his affidavit schedules which identify the tasks performed in the administration, the name and position of the employee who performed the task, the time taken in performing the task and the hourly rate of remuneration applicable to that particular employee. It is not possible from those schedules to deduce whether all the tasks relate to the administration of trust property. However, in his affidavit, Mr Collins explains:

“As discussed further below, the only assets remaining upon my appointment, were those held by Bexalaw as trustee of the Gladstone Unit Trust (or as manager of the Barney Point Project). As such, save for some initial investigations, the majority of my role as liquidator has been in respect of Bexalaw as trustee of the Gladstone Unit Trust (and as manager of the Barney Point Project). The application I have made in this supporting affidavit seeks approval for remuneration in respect of work performed in this capacity only.”⁴

[8] Mr Collins later explained that the total remuneration to which he and Mr Joiner are entitled is \$186,366.20 plus GST which exceeds the sum he and Mr Joiner are presently claiming. He has received approval to be paid \$175,729.45 plus GST, of which \$37,382.45 plus GST has been paid. The sum presently held in trust of \$152,181.70 inclusive of GST represents the amount approved less the amount which has been paid of \$37,382.45 plus GST. Further, there is additional remuneration in finalising the winding-up of the trust which he estimates is \$23,000 plus GST but which he is not seeking to recover. All relevant interested parties have been

at [78] – [92].

⁴ Affidavit of Gerald Thomas Collins, filed 29 June 2018, CFI 41 at [16].

served with a copy of the present application and while there are no appearances on behalf of any other parties, all have in writing indicated a consent to the orders.

[9] I am satisfied that the sum of \$152,181.70 presently retained by the liquidators is a sum to which they are entitled and that sum should be distributed to them.

[10] I declare that:

1. The applicants are entitled to remuneration in the amount of \$152,181.70 being the sum retained by them in accordance with the order of 9 February 2018.
2. The applicants are entitled to distribute the sum of \$152,181.70 to themselves in payment of that remuneration.