

**JUDGMENT** : Einstein J : New South Wales Supreme Court : 20<sup>th</sup> July 2004

- 1 Following the delivery of the judgment yesterday on 19 July 2004 the matter is before the Court for the purpose of the making of appropriate orders.
- 2 It is common ground that the sole issue raised in terms of the hearing leading to the judgment concerned the inclusion of piling work within the payment claim.
- 3 The defendant has indicated that it proposes to appeal from the judgment and that in that regard, it proposes not only to contend that what I have found was incorrect but also to contend that, if incorrect, the whole of the payment claim is infected and was invalid. That matter was not the subject, as Mr Ashhurst readily concedes, of any argument, was not put to the court and was not dealt with.
- 4 There are a number of discretionary considerations which arise.
- 5 My own view is that in the circumstances where the statutory scheme mandates in very clear terms the entitlement of an applicant to summary judgment in relation to a statutory debt once the statute has been complied with, if a stay of orders to be made is to be granted at first instance it should be for the briefest of periods consistent only with the giving to the defendant of an opportunity to move the Court of Appeal *urgently* for any extension of such stay.
- 6 In those circumstances my usual practice unless there was some evidence suggesting that a contrary course was necessary [as for example where some irregular dealing with assets may be feared] would be to grant the stay up to and including midnight on the Monday following the giving of the judgment and the making of the orders at first instance.
- 7 In this instance it seems to me that, subject to what I am about to say, it is appropriate to make the orders granting a stay up to and including midnight on Monday next 26 July 2004.
- 8 The proviso to which I have referred concerns the question of whether or not, in the instant circumstances, the stay order should extend to the whole of the judgment [which is to be for the plaintiff in the sum of \$4,900,497.35] or whether the stay should only be a stay of the judgment sum relating to the piling work portion of the payment claim, namely approximately \$1,606,561.60.
- 9 In circumstances where the proposition that the whole of the judgment should be stayed is put against a background where no such matter was contended for at first instance, it seems to me that the order which should be made is a stay of so much of the judgment as represents the piling work figure.
- 10 For those reasons the Court will make orders in terms of the short minutes of order with the appropriate rider relating to a stay.
- 11 I make orders in terms of paragraphs 1, 2, 3 and 4 of the short minutes of order which I initial and date 20 July 2004.
- 12 I further order that the judgment in terms of order 2 be stayed in the amount of \$1,606,561.60 up to and including midnight on 26 July 2004.

Mr M Rudge SC, Mr D Meltz (Plaintiff) instructed by Baker & McKenzie  
Mr M Ashhurst (Defendant) instructed by Church & Grace