Mineralogy and Sino Iron – Clive Palmer's Company Loses Appeal (and Early Payment)

In April 2017, the WA Court of Appeal overturned a first instance decision in favour of the Clive Palmer company, Mineralogy Pty Ltd, thereby overturning an award in favour of Mineralogy for early payment before trial of US$10.7 million: ***Sino Iron Pty Ltd v Mineralogy Pty Ltd [No 2] [2017] WASCA 76***.

This loss comes on the back of a case we reported on earlier that month where the Federal Court of Appeal found against Mineralogy Pty Ltd. Both appeal decisions relate to the long running dispute between Mineralogy and Sino Iron Pty Ltd over the Sino Iron ore project in the Pilbara region of Western Australia.

In its judgment, the WA Court of Appeal has clarified the equitable principles that apply to mandatory injunctions for the payment of money pending trial. This decision ought to alert companies to the high threshold that must be reached when seeking to enforce contractual rights and obtain early payment of monies due under a contract by means of an interlocutory injunction while the case awaits a final determination from the court.

Background

Under the contractual framework between the Clive Palmer's company, Mineralogy Pty Ltd (Mineralogy) and two Sino Iron Pty Ltd companies (CITIC), concerning the Sino Iron ore project in the Pilbara region of Western Australia, Mineralogy was to be paid a royalty by CITIC for magnetite ore produced at the project which was to be operated by CITIC. The parties are in dispute about the payment of the royalty and that dispute is the subject of pending proceedings before the Supreme Court of Western Australia. The case has not yet come to a hearing.

Mineralogy applied to the case management judge for interlocutory orders by way of mandatory injunction that CITIC pay Mineralogy approximately US$81 million by way of royalty payments. These royalty payments were disputed as to both liability and quantum in the substantive proceedings.

Case Management Judge's Decision

The case management judge concluded that Mineralogy had a strong case on the face of the material before him and that it was entitled to a reasonable amount of royalties. He considered there was no "real fiscal prejudice" to CITIC in the sense that there was no evidence that they could not afford to pay the royalties.

He also considered, among other things, that there were "persuasive concerns" about Mineralogy's financial condition (some of which was contributed to by the non-payment of the dispute royalties) and, if CITIC won at trial, it could be repaid by off-setting those monies from other undisputed royalty payments due to Mineralogy.

In granting the injunction, the case management judge considered that the injunction was necessary to restore a proper balance to the contractual rights and obligations of the parties. He ordered that one half of the US$22 million in disputed royalty payments due at October 2014 be paid to Mineralogy, and the other half paid into court to abide further orders.

Appeal

CITIC appealed to the WA Court of Appeal and was successful.

During the appeal, Mineralogy sought to introduce additional evidence. The new evidence was in the form of affidavits of Clive Palmer in which he sought to introduce a media release by CITIC that referred to an estimated impairment to its accounts and various newspaper articles, asserted that Mineralogy needed the funds to properly fund its operations and fund the case to trial, made an offer of a personal undertaking to meet any unsatisfied undertaking as to damages from Mineralogy and outlined the assets of one of his other companies.

The court held that the affidavits were largely inadmissible, including on the grounds of irrelevance. To the extent they were admissible, the court found that the material lacked any probative value.

The court then helpfully summarised the principles applicable to injunctions in aid of legal rights. The court observed that simply establishing that legal rights are breached or in jeopardy is not enough, and that interlocutory relief by way of injunction – a discretionary remedy – would ordinarily only be ordered if damages were not ascertainable or otherwise an adequate remedy.

Disposition of the Appeal

The court noted that the usual form of interlocutory injunction is "until after judgement in this action, or until further order" and this was not the form of order used by the case management judge. The orders made by the case management judge were free-standing orders operating irrespective of the final outcome at trial.

Mineralogy's claims in the substantive proceedings were not for specific performance or a mandatory injunction but merely at common law, including payment of a debt. As well as noting this, the court observed that the case management judge had not examined why the Mineralogy claim for debt needed the protection of an equitable injunction or the issue of the inadequacy of damages.

Key further conclusions of the court were that Mineralogy had, in fact, been granted final relief (albeit of a conservative amount) and that the orders had enabled Mineralogy to bypass the summary judgment procedure where it would have had to establish, without doubt, that there was no real question to be tried – a high bar.

The court concluded that, as liability and quantum in relation to the royalty was in dispute, such a dispute could not be resolved summarily in favour of Mineralogy. Even accepting that Mineralogy had a strong case on the face of the present material, the rights it was asserting in the action did not require or justify equitable protection by way of mandatory injunction before trial.

Finally, the court noted that the imperatives and policies of case management cannot salvage the interlocutory orders if they were contrary to equitable principles, which the court found they were.

Observations

The WA Court of Appeal has clarified the equitable principles that apply to mandatory injunctions to enforce contractual rights for the payment of money pending trial. This decision ought to alert companies to the high threshold that must be reached when seeking to enforce contractual rights and obtain early payment of monies due under a contract by means of an interlocutory injunction while the case awaits a final determination from the court.

Contact

Greg Steinepreis
Partner
E greg.steinepreis@squirepb.com