

CITATION: *Cavalier Homes Brisbane Pty Ltd v Queensland Building Services Authority* [2012] QCAT 131

PARTIES: Cavalier Homes Brisbane Pty Ltd
v
Queensland Building Services Authority

APPLICATION NUMBER: OCR054-12

MATTER TYPE: Occupational regulation matters

HEARING DATE: 1 March 2012

HEARD AT: Brisbane

DECISION OF: **Richard Oliver, Senior Member**

DELIVERED ON: 26 March 2012

DELIVERED AT: Brisbane

ORDERS MADE: [1] **Until further order of the Tribunal the respondent's decision dated 2 February 2012 imposing the condition on the applicant's licence is stayed.**

CATCHWORDS: Stay – where balance of convenience favours a stay

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Cavalier Homes Brisbane Pty Ltd represented by Eaton Lawyers

RESPONDENT: Queensland Building Services Authority represented by Robinson Locke Litigation Lawyers

REASONS FOR DECISION

[1] On 28 February 2012 Cavalier Homes filed an application to review a decision by the Queensland Building Services Authority to impose the following condition on its license:

“Cavalier Homes Brisbane Pty Ltd must not provide tenders or quotes, or enter into any contracts, for the performance of building work as defined in the Queensland Building Services Authority Act 1991 until it is notified in writing by BSA that the BSA is satisfied it has the financial capacity to undertake new work.”

- [2] Accompanying the application to review the decision was an application to stay the decision of the Authority. I listed the application for an urgent directions hearing on 1 March 2012. After hearing from the parties I granted a stay until further order of the Tribunal. The Authority has requested reasons.
- [3] The application for the stay was opposed by the Authority on the ground, inter alia, that as the company did not meet the financial requirement of the conditions of its licence it was necessary to protect consumers who might deal with Cavalier Homes.
- [4] In support of the application Cavalier Homes filed a number of affidavits including one from Peter Gale of Cavalier Homes. In that affidavit Mr Gale addresses the issues raised by the Authority relating to the company's net tangible assets which are considered in determining whether the applicant can meet its minimum financial requirements under the Act.
- [5] Mr Gale said that the company intended to reduce its annual turnover from \$40,000,000 down to \$15,000,000 resulting in a much lesser net tangible asset base to support the annual turnover of the lesser amount.
- [6] He referred specifically to a debt to Westpac Bank, of \$2,514,000. To clear this debt two properties had been sold resulting in proceeds of \$2,950,000 to the company.¹ This debt was to be cleared with the sale of those properties, due for settlement on 24 February 2012.
- [7] There was an acknowledgement by Mr Gale that there were discrepancies in the financial information provided to the Authority but that was to be addressed by a further report from Mr Garis, a registered company auditor.
- [8] Mr Garis, in his affidavit, identified some risks associated with the company's activities but, during the course of the hearing of the stay application on 1 March 2012 Cavalier Homes submitted, through their counsel, that Mr Garis was to provide an updated report to deal with discrepancies identified by the Authority. That report would be available by the end of March.
- [9] In considering whether a stay should be granted in a review application one has to have regard to section 22 of the *Queensland Civil and Administrative Tribunal Act 2009*. Here of relevance is the public interest as submitted by the Authority. Also of relevance is the balance of convenience and whether there is an arguable case. The affidavit material filed does raise an arguable case but more importantly it seems that the balance of convenience takes on a greater relevance here.
- [10] Mr Gale, who attended the directions hearing in which the stay application was considered, informed me that with the condition in place on the license Cavalier Homes' building suppliers would not continue to supply building products to the company, resulting in work stopping on its building projects. This would have significant consequences to both the company and persons

¹ Paragraph 8.3 of Mr Gale's affidavit.

with whom it has building contracts and may lead to the termination of building contracts.

[11] I accept the submissions of counsel for the applicant that on the basis of the substantial funds coming to the hands of the company through the sale of the properties² within a week and, a further report by Mr Garis dealing with the discrepancies the balance of convenience favours the granting of a stay of the operation of the condition on Cavalier Homes' license at least until the next directions hearing on 29 March 2012. To facilitate further negotiation between the parties whilst that further report is provided the matter was listed for a compulsory conference on 14 March 2012. Mr Garis is to provide a further updated report by 28 March 2012.

[12] In the circumstances, it is appropriate to grant the stay.

² Refer to the affidavit of Peter Gale paragraph 8.3.