

In the matter of Australian Liquor Group Ltd (No. 2)
[2001] ATP 19

Catchwords:

Standing over Panel proceedings – overlap with Court proceedings
Corporations Act 2001 (Cth), section 659C

On 7 August 2001, we decided to stand the application made by Liquorland over. We did not reach the point of considering whether a declaration of unacceptable circumstances should be made in relation to the takeover bid made by Liquorland Pty Ltd for Australian Liquor Group Ltd (ALQ).

REASONS FOR DECISION

Background

1. When we decided to conduct proceedings in response to Liquorland's application, we limited those proceedings to the application to make interim orders at least.
2. Therefore, when we made our Interim Orders on 17 July 2001,¹ we were yet to decide whether we would proceed to consider Liquorland's application for a declaration of unacceptable circumstances and final orders. We said in our reasons that the assertions of Liquorland had not been tested and that we had not considered whether or not they had been made out.

Submissions received

3. After we made interim orders restraining payment to the ex-directors of ALQ, we asked the parties whether it would be in the public interest for the Panel to pursue its proceedings in this matter. They each said that the Panel should not pursue its proceedings. The primary reasons given by the parties were that the issues at the heart of the matter are now to be heard by a Court, that the Court was the more appropriate forum for this matter and it would be inefficient and undesirable for more than one forum to be considering similar issues at the same time. Indeed, this is something which we had already acknowledged ourselves. In our initial reasons for making the interim orders, we stated that:

¹ These interim orders were later amended to remove some "associates" of the former directors and to extend the time for which they applied. They have now lapsed. See further our earlier reasons in this matter, dated 30 July 2001.

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“This dispute is best submitted to the Court, because of this time factor and the availability of precisely defined causes of action, measures of loss and procedural powers and remedies. Accordingly, our present view is that it would be preferable that the Panel declined to attempt to make those orders, leaving Liquorland to its remedies in the Courts.”²

4. Our view on this has not changed. Given the allegations made by Liquorland, it is clear that this dispute is likely to take some time to be resolved. In addition, there may be other causes of action available to Liquorland that can only be contested in a Court. The Court’s processes and procedures are better suited to enabling the testing of the large amount of evidence required to make a proper determination on the facts in this case.
5. We also agree with the submissions made by the parties that it would be undesirable to have matters involving the same facts running in different jurisdictions at the same time. In our view, these issues should be dealt with at the same time, in the same forum, to the extent possible.
6. Weighed against this is a concern that a question of disclosure by a target in a takeover will lie at the centre of the decision of the court in this matter. Ordinarily we consider that it would be desirable that decisions on such issues be made by the Takeovers Panel. However, for the reasons given before, we think it is not practicable for the Panel to undertake the detailed evidentiary enquiry which is likely to be required in this case. On balance we consider in this case, it is appropriate for the Court to determine the issue of contention on Liquorland and ALQ ex-directors.

Court proceedings

7. Liquorland commenced proceedings against the former directors of ALG on 1 August 2001, and appeared before Justice Beach on Monday 6 August 2001. We understand that Justice Beach made consent orders which effectively extend the hold we placed on the moneys owing to the former directors of ALG and Philip Murphy Investments Pty Ltd, until further order.

Decision

8. As the parties have requested that we take this matter no further, we have decided to stand this matter over. We leave it open to the parties to request that we re-commence our proceedings, providing that they do so

² See Paragraph [35]

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within the time limits in which it is open to us to make a declaration.³ Alternatively, the parties may bring a fresh application to the Panel.

9. In standing this matter over, we emphasise that we have not reached the point of making a decision on the merits of Liquorland's substantive allegations, or the relief it seeks. Those allegations, and the evidence supporting them have not been tested in these proceedings. Before we could have considered those questions we would need to seek submissions and rebuttals from the parties, as required under Regulation 22 of the ASIC Regulations. We have not commenced that process.
10. In particular, we have not refused to make a declaration of unacceptable circumstances. That possibility remains open, if the Supreme Court proceedings terminate, and the parties request that we pursue the matter.

Alice McCleary
President of the Sitting Panel
Decision dated 8 August 2001
Reasons published 20 August 2001

³ We can only make a declaration within 1 month of having received an application for a declaration or 3 months after the circumstances occurred, unless we apply to the Court for an extension of time. Refer to section 657B of the Corporations Act.