



HIGH COURT OF AUSTRALIA

Public Information Officer

13 December 2007

KOOMPAAHTOO LOCAL ABORIGINAL LAND COUNCIL AND TERRY LAWLER v SANPINE PTY LIMITED AND KLALC PROPERTY & INVESTMENT PTY LTD

Serious breaches by Sanpine of its administrative obligations under an agreement to develop land justified termination of the contract by the Koompahtoo Local Aboriginal Land Council, the High Court of Australia held today.

In 1997, Koompahtoo and Sanpine entered into a joint venture agreement for the development of a large area of land near Morisset, south of Newcastle. Koompahtoo contributed the land, which had been acquired under the NSW *Aboriginal Land Rights Act*, and Sanpine managed the project. Each party had a 50 per cent interest and Sanpine was also to receive a management fee equal to 25 per cent of the total project costs. Despite accruing costs of more than \$2 million, the project did not proceed to rezoning. It involved sensitive environmental issues, was controversial within the Koompahtoo community, and had difficulty attracting finance. A mortgagee took possession in April 2003. In February 2003, Mr Lawler was appointed as administrator. He attempted to obtain from Sanpine information on the financial position of the joint venture, including how money from two lenders had been used. In December 2003, Mr Lawler terminated the joint venture agreement.

Sanpine commenced proceedings in the NSW Supreme Court, seeking a declaration that the termination was invalid and the agreement still on foot. Justice Joseph Campbell held that the agreement was validly terminated. He found Sanpine had committed serious breaches of its obligations under the joint venture agreement. Those obligations were categorised as document production and maintenance, banking and spending of money, and failures to maintain proper books. Proper accounts and financial records were never kept, and documentation was lacking to explain or justify significant amounts it claimed to be expenses chargeable to the joint venture, including a payment of more than \$183,000 to the wife of a Sanpine controller. Sanpine argued that by reasons of waiver or estoppel Koompahtoo could not complain of these breaches. Justice Campbell rejected this argument and found that the Koompahtoo members of the joint venture's management committee made no representations on which Sanpine relied concerning non-performance of its obligations. He described the failure to keep books for the joint venture so that annual accounts could be drawn up and audited each year as a gross departure from the terms of the agreement.

The NSW Court of Appeal, by majority, allowed an appeal by Sanpine. Koompahtoo appealed to the High Court. The Court unanimously allowed the appeal. It held that the breaches deprived Koompahtoo's representatives of the capacity to make informed decisions. Sanpine's breaches went to the root of the contract and justified termination of the contract.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*