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IN THE COURT OF APPEAL OF NEW ZEALAND

CA90/05

	BETWEEN	MORNING STAR (ST LUKES GARDEN APARTMENTS) LIMITED Appellant
	AND	CANAM CONSTRUCTION LIMITED Respondent

Hearing: 13 June 2006

Court: Glazebrook, O'Regan and Arnold JJ

Counsel: R J Latton for Appellant
G J Christie for Respondent

Judgment: 8 August 2006 at 11 am

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellant is to pay costs of $6,000 to the respondent, plus usual disbursements.

REASONS OF THE COURT

(Given by Arnold J)

Introduction

[1] This is an appeal against a decision of Laurenson J allowing the respondent, Canam Construction Ltd (the defendant in the Court below) to amend its pleadings after the parties had closed their cases to include a counter-claim based on quantum meruit. The appeal is against both the granting of leave to amend and the Judge's

finding that Canam was entitled to be paid on the basis of a quantum meruit. There is also an appeal against the costs award made by the Judge.

Background

[2] The appellant, Morning Star (St Lukes Garden Apartments) Ltd is a property development company owned by Mr Arthur Morgenstern. It proposed to develop an apartment complex in Mount Albert, Auckland.

[3] On the basis of an earlier successful collaboration, Mr Morgenstern approached Canam to become the design and build contractor for the project. In June 2002, Morning Star and Canam entered into an agreement known as the Working Together Agreement (WTA).

[4] The purpose of the WTA was described in clause 1 as follows:

> The following document records the agreement between Morning Star St Lukes Garden Apartments Ltd and Canam Construction Ltd to work together for the design and construction of the St Lukes Garden Apartment project.

[5] The WTA contemplated a development comprising 180 apartments and associated facilities (clause 2.1). Clauses 2.3, 2.4 and 2.5 provided:

> 2.3 Morning Star St Lukes Garden Apartments Ltd wishes to enter into a negotiated design and build GMP (Guaranteed Maximum Price) contract with the consultants novated to Canam at a later stage.
>
> 2.4 Morning Star St Lukes Garden Apartments Ltd has engaged Woodhams/Meikle Architects to prepare outline drawing specifications and other architectural work necessary for the facilitation of sales. These and any other consultants will be novated to Canam prior to the signing of the GMP contract.
>
> 2.5 The parties wish to conclude negotiations and enter into a formal GMP contract based on NZA 3910:1998 before work commences on site.

[6] The anticipated start date for the project was October 2002, but that could be adjusted by up to six months "to accommodate pre-sale and other financial conditions" (clause 4.11).

[7] The parties were to work together to establish a Guaranteed Maximum Price (GMP) (clause 4.1). Annexed to the WTA was a GMP Proposal prepared by Canam for Morning Star. That proposal outlined a range of services that Canam could provide, identified its project team, set out the communications and reporting structure and identified the proposed contractual format. The services which were to be provided were divided into two distinct stages - the Design and Pre-construction Stage and the Construction Stage. Under the WTA Canam undertook to "perform the pre-construction services, but not limited to the ones detailed in the attached GMP proposal."

[8] Clause 4.12 of the WTA provided:

> Should Morning Star St Lukes Garden Apartments Ltd be unable to obtain sufficient sales and values which in its sole discretion, justify the completion of the development then it shall be entitled to end this agreement without recompense or other obligations to Canam.

[9] As part of its obligations under the WTA, Canam was to construct a display suite. The costs for this were to be included in the GMP as part of the main construction contract. However, clause 5.3 provided:

> Should the project not proceed and notwithstanding clause 4.12, Morning Star St Lukes Garden Apartments Ltd are to pay Canam Construction Ltd for all costs associated with the display suite, within seven days of presentation of the relevant invoice.

[10] It is clear that Canam had to undertake considerable work to provide a GMP. Apart from clause 5.3, there was no provision for payment of Canam for its work under the WTA. Accordingly, the WTA was intended to give Canam some assurance that it would be appointed as the main contractor if the project went ahead, thus enabling it to recoup its costs.

[11] Following the signing of the WTA, Canam constructed the display suite. Between September and October 2002, six design team meetings involving representatives of both parties were held. However, it was not until November 2002 that Morning Star obtained a resource consent for the proposal and not until February 2003 that Morning Star completed the purchase of the site for the project.

[12] In March 2003, the design team meetings re-commenced. On 23 March 2003 Morning Star and Canam entered into a contract for demolition and associated roadworks on the site (the Demolition and Associated Road Works contract). These works were then carried out.

[13] Although the design team meetings continued and Canam continued with its work on the project right through to June 2003, Mr Morgenstern had started exploring pricing options with other contractors early in 2003. Ultimately in June 2003, Mr Morgenstern advised Canam that Morning Star proposed to put the project out for tender. He invited Canam to participate in that tender. However, Canam refused, essentially, the Judge found, because it believed that Morning Star was in breach of its obligations under the WTA by going to tender, and because it considered that it had been awarded the construction contract in any event. In July 2003, the construction contract was awarded to another company. That company commenced construction work in October 2003.

[14] Prior to June 2003, Canam provided Morning Star with several price indications in relation to the project. The Judge found that Canam was continuing to work until June 2003 to provide a further adjusted GMP. One of the difficulties, however, was that the scope of the project changed over time. The WTA contemplated a development of 180 units and associated facilities. Some time in late 2002, that figure seems to have dropped to 167 units, and without the associated facilities, but by March 2003, seems to have increased to 240 units.

[15] On 19 June 2003, Canam submitted an invoice to Morning Star for work carried out under the Demolition and Associated Road Works contract and for the design management and administration costs (DMA costs) at issue in this appeal. This was not paid. Canam issued a statutory demand for the amount.

[16] On 7 November 2003, Morning Star issued proceedings against Canam alleging misrepresentation, breach of the Fair Trading Act, breach of contract and negligence. Two directors of Canam were also sued in respect of the Fair Trading Act claim. For its part, Canam counter-claimed alleging that

Morning Star had not paid the amount due under the Demolition and Associated Road Works contract and had breached the WTA in various respects.

Decision of the High Court

[17] The way that the matter was presented at trial reduced the issues. The claims against the directors were withdrawn prior to the hearing of final submissions. By the end of the trial Laurenson J concluded that there were only two live issues, namely:

(a) Morning Star's claim for breach of contract, ie, the WTA;

(b) Canam's counter-claim.

[18] In relation to the breach of contract claim, Morning Star alleged that Canam had failed to undertake necessary pre-construction tasks and had failed to provide a GMP. Laurenson J found against Morning Star on both points. On the first, the Judge held that the WTA did not impose on Canam the obligations alleged. On the second point, the Judge found that there were delays and difficulties which were largely the responsibility of Morning Star. Despite these, Canam did provide Morning Star with sufficient pricing information to enable it to commit to the project, which it did in February 2003 when it settled the purchase of the land and drew down on its funding. The delay in construction resulted "almost entirely" from the difficulties in obtaining the necessary resource consent, and that was the responsibility of Morning Star. There is no appeal from these aspects of the decision.

[19] In relation to its counter-claim, Canam sought recovery of various sums, including the DMA costs, which were incurred in the period mid-February to June 2003. These costs were claimed under the Demolition and Associated Road Works contract and alternatively, under the WTA. However, the parties apparently agreed that the costs should also be treated as claimed under the main construction contract, which Canam said had been awarded to it, so that the Judge addressed that aspect as well.

[20] The Judge concluded that the DMA work was outside the terms of the WTA but would have fallen within the scope of the main construction contract had it been agreed. The Judge held that the main contract had not been agreed, however, as key terms remained unresolved (eg. price) and the parties had not evinced an intention to be bound. The parties appeared to have operated, the Judge held, under a "hybrid arrangement".

[21] The Judge concluded Canam was entitled to be paid for the DMA work on the basis of a quantum meruit. Unfortunately, Canam had not pleaded a quantum meruit. The Judge noted, however, that under Rule 11(2) of the High Court Rules, the Court has power at any stage of a proceeding, either of its own motion or on the application of the party, to make such amendments to the pleadings as are necessary for determining the real controversy between the parties. The Judge indicated that he was minded to allow an appropriate amendment but reserved leave to the parties to file and serve memoranda on the point.

[22] The parties did file memoranda, and Canam sought leave to amend its statement of claim by adding the following:

> **AND BY THE WAY OF THIRD SET OFF AND COUNTERCLAIM** the first defendant repeats the above paragraphs **AND FURTHER SAYS**
>
> 77. **THE** first defendant carried out the work and performed the services as advised to the plaintiff on 18 June 2003 as pleaded in paragraph 56 above, and did so with full knowledge of the plaintiff.
>
> 78. **THE** plaintiff received benefit from the first defendant carrying out the work and performing the services as detailed in paragraph 56 above.
>
> 79. **THE** first defendant is entitled to be paid for the work carried out and the services performed as detailed in paragraph 56 above on a quantum meruit basis.
>
> **WHEREFORE THE FIRST DEFENDANT CLAIMS**
>
> (a) Judgment in the sum of $279,180.2
>
> (b) Interest at the Judicature Act rate
>
> (c) Costs.

[23] In a decision dated 4 July 2005 Laurenson J granted Canam leave to make the amendment proposed. The Judge then went on to say:

> [9] The elements of quantum meruit have recently been summarised by Winkelmann J in *Villages of New Zealand (Pakuranga) Ltd v Ministry of Health* (HC Auckland, CIV2003-404-5143, 6 April 2005) as follows:
>
> [i] A request to provide services
> [ii] Free acceptance of the services
> [iii] A benefit from the provision of the services.
>
> [10] As previously indicated I now confirm that in my view each of these three elements were addressed in the findings made in my earlier decision.

[24] It is important to note, however, that Winkelmann J's formulation in *VONZ* makes it clear that the first two requirements are alternatives (at [73]). Further, in her discussion of "benefit" Winkelmann J accepted that if other conditions are met, proof of benefit (in an economic value sense) is unnecessary (at [81]-[90]). We return to this aspect below.

[25] The Judge also dealt with costs in his decision of 4 July 2005. The Judge assessed costs at twice the normal 2B rate under Rule 48C(3)(d). The Judge did this to reflect:

(a) The lack of any merit in Morning Star's claim. The Judge considered that the proceedings had been issued for tactical reasons.

(b) The "cavalier' nature of the claim against the two Canam directors, which was ultimately not pursued at trial and was issued in an effort to overbear Canam.

(c) The extent of the unnecessary documentation put before the Court by Morning Star, which Canam had to deal with.

(d) The fact that Canam sent a Calderbank letter to Morning Star shortly before the trial.

Discussion

[26] Morning Star accepted that Rule 11(2) of the High Court Rules was sufficiently broad to permit an amendment of the type made in this case. Morning Star argued, however, that the amendment caused it "significant prejudice" and was unjust.

[27] The prejudice which Morning Star said it suffered was that it did not call evidence or make submissions on whether it obtained any actual benefit from the services provided, on whether the DMA services fell under the WTA and on whether it ought to have known that Canam expected to be paid for those services outside the context of the main construction contract. No greater detail of the proposed evidence was provided.

[28] Mr Latton also argued for Morning Star that the Judge was wrong to find that the DMA services were not provided under the WTA. He said that the WTA contemplated that the drawings for the project would be 90 – 95% complete before the final GMP was settled. At the time that the DMA work began, the drawings were only 40% complete, and were not 90% complete until mid-June 2003. Mr Latton argued that throughout the relevant period the parties were proceeding on the basis that the WTA remained in force. The WTA contemplated the possibility that the parties would not be able to agree to the main construction contract, and provided for limited reimbursement of Canam in that event. There was, accordingly, no scope for a quantum meruit claim.

[29] We deal with this point first. Mr Latton's argument involves two propositions:

(a) The DMA work fell within the scope of the WTA;

(b) As a consequence Canam could have no reasonable expectation of payment if it did not obtain the main construction contract (other than in relation to the display suite under clause 5.3).

We do not consider that either proposition is sustainable.

[30] As to the first proposition, the WTA is an imprecisely drafted and ambiguous document. It is difficult to identify what it achieved, other than in very broad terms. Having considered the terms of the WTA and the GMP proposal annexed to it in light of the relevant background material the Judge concluded that there was defined pre-construction work that had to be done after a GMP had been agreed. In other words, pre-construction work was not limited to work carried out prior to the acceptance of the GMP.

[31] The Judge held that the DMA work was pre-construction work that had to be carried out once the GMP had been agreed (ie. under the main construction contract). It was, therefore, not provided under the WTA.

[32] We are not prepared to disturb the Judge's decision on this aspect of the case. There are two reasons for this.

[33] First, because the WTA is unclear and ambiguous the trial Judge is likely to have obtained considerable benefit from the "factual matrix" in reaching a view about its meaning and scope. We agree with the Judge that some pre-construction work fell within, and some outside, the scope of the WTA. The question is whether the pre-construction work at issue (the DMA work) fell within or without its scope. The Judge reached a view on that question following a careful analysis of the documentary and oral evidence, the latter of which covered seven days. We are not in a position to conclude that the Judge's assessment that the DMA work fell outside the scope of the WTA was wrong.

[34] Second, to the extent that the WTA has a discernible purpose it is to set out a process that the parties would follow in attempting to agree a GMP. It was intended to give Canam some reassurance that if the process was followed it would obtain the main construction contract. It is apparent, however, that the parties did not follow the WTA in accordance with its terms. For example:

(a) The WTA contemplated a development of 180 units plus associated facilities. However, Morning Star modified the proposed project in late 2002 by reducing its scope, and again in early 2003 by increasing its scope, without amendment to the WTA. These changes affected the work that Canam was required to perform.

(b) The WTA contemplated that the project would commence in October 2002, but allowed for leeway of up to six months for financial reasons (ie, up to April 2003). This timetable was not adhered to for a variety of reasons, generally, the Judge found, having to do with Morning Star's areas of responsibility. Again, there was no amendment to the WTA.

[35] Against this background we cannot accept Morning Star's submission that the DMA work must have been carried out under the WTA because the drawings were not 90% complete when the work started in February 2003. The parties, and in particular Morning Star, simply did not adhere to the WTA.

[36] As to the second proposition, it does not follow that if the DMA work was carried out under the WTA Canam could have had no reasonable expectation of payment. Canam undertook the DMA work at the specific request of Mr Morgenstern in circumstances where Canam thought, legitimately, that it would receive the main contract. It is true, as Mr Latton said, that the WTA contemplated that the project might not proceed, and provided in that event that Canam would recover only for its work in relation to the display suite. But the relevant clause of the WTA, clause 4.12, allowed Morning Star to end the WTA without recompense to Canam in one situation, i.e., where it was unable to obtain sufficient sales to justify completion of the project. Here, however, sufficient sales were obtained. Morning Star decided not to proceed with Canam for its own reasons. While Morning Star may not have been contractually obliged to grant the main construction contract to Canam, the fact that it did not award Canam the contract for reasons other than an insufficiency of sales means that Canam could legitimately have had a reasonable expectation of payment. Mr Morgenstern seems to have had the same expectation because he confirmed that Canam would be paid.

[37] In summary, then:

(a) We are not prepared to disturb the Judge's finding that the DMA work was not carried out under the WTA.

(b) Even if the DMA work had been carried out under the WTA, that would not necessarily have meant that there could have been no reasonable expectation of payment.

(c) We are in no doubt that the Judge was right to find that there was a reasonable expectation of payment in the present case, one that was shared by both parties.

[38] We turn now to Canam's submissions as to prejudice. First we identify the elements of a quantum meruit claim. An important issue is whether the defendant in a quantum meruit claim must derive a benefit from the plaintiff's work.

[39] In the passage quoted at [23] above Laurenson J identified the obtaining of a benefit as a requirement. He found that there was such a benefit (at [147] and [148](d)). However, Mr Latton accepted that there is doubt as to whether a benefit is required.

[40] Historically, a quantum meruit claim was treated as being based upon an implied contract. Today a quantum meruit claim is generally seen as being a restitutionary claim. As such, it is said to be based upon unjust enrichment principles. So Winkelmann J in *VONZ* at [76] said:

> I am also of the view that it is to cast the cause of action in quantum meruit too narrowly to require evidence of a clear request for services. The insistence upon evidence of a request is out of step with a recognition that the quantum meruit cause of action like other claims for restitution at common law, is solidly based upon principles of unjust enrichment, rather than upon a notion of implied contract. The implied contract theory for claims for restitution at common law has now been laid to rest. In *Westdeutsche Landesbank Girozentrale v Islington Borough Council* [1996] AC 669, Lord Browne Wilkinson said :
>
> > Subsequent developments in the law of restitution demonstrate that this reasoning is no longer sound. The common law restitutionary claim is based not on implied contract but on unjust enrichment: in

> the circumstances the law imposes an obligation to repay rather than implying an entirely fictitious agreement to repay ... In my judgment, your Lordships should now unequivocally and finally reject the concept that the claim for moneys had and received is based on an implied contract. I would overrule *Sinclair v Brougham* on this point.

[41] According to Goff & Jones *The Law of Restitution* (6th ed 2002) at [1-016], the principle of unjust enrichment:

> ...presupposes three things. First, the defendant must have been enriched by the receipt of a *benefit*. Secondly, that benefit must have been gained *at the plaintiff's expense*. Thirdly, it would be *unjust* to allow the defendant to retain that benefit. These three subordinate principles are closely interrelated, and cannot be analysed in complete isolation from each other.

[42] Not all commentators agree that the principle of unjust enrichment underlies a quantum meruit claim. For example, Grantham and Rickett argue that it is wrong to see all restitutionary claims as based upon unjust enrichment, and that the principal application of quantum meruit is as a response to a promissory obligation. As Winkelmann J noted in *VONZ* at [72], most quantum meruit claims are made in one of two situations:

(a) where services are provided under contracts that subsequently prove to be unenforceable for some reason; or

(b) where services are provided in the (unfulfilled) expectation that a contract will be agreed under which the cost of the services will be recovered.

[43] In these instances, it is argued, the purpose of a quantum meruit is not to force the defendant to disgorge some wrongfully obtained benefit; rather, it is to ensure that the plaintiff is accorded fair compensation for the services provided. These issues are discussed by Grantham & Rickett in *Enrichment & Restitution in New Zealand* (2000), especially at Chapter 11, and in "Restitutionary Remedies" in Blanchard (ed) *Civil Remedies in New Zealand* (2003).

[44] An understanding of the analytical foundation of quantum meruit in cases involving ineffective, incomplete or "unmade" contracts may assist in the

identification of the requirements for a quantum meruit in such cases. As we have noted, Laurenson J said that the receipt of a benefit by the defendant was one of the requirements. If quantum meruit is based on unjust enrichment principles, that requirement is a logical one – the focus of the claim will be on making the defendant disgorge the unjustly gained benefit. But if the true purpose of the claim is to compensate the plaintiff for the services it has provided to the defendant, the nature and extent of the benefit obtained by the defendant may have little or no relevance.

[45] Proponents of the unjust enrichment approach argue for an extended concept of "benefit" or for a "deeming" of benefit in this type of case - see the discussion in Goff & Jones *The Law of Restitution* at [1-019] – [1-022]. The learned authors say that where a defendant freely accepts the services proffered he will be held to have benefited from them "if he, as a reasonable man, should have known that the plaintiff who rendered the services expected to be paid for them, and yet he did not take a reasonable opportunity open to him to reject the proffered services". In such a case, "he cannot deny that he has been *unjustly* enriched". Accordingly, "a defendant may be compelled to pay for services which he asserts, honestly if perversely, are of no benefit to him" (at [1-019], footnotes omitted). The learned authors later say that a person who requests and accepts services will be deemed to have received a benefit (at [1-022]).

[46] The view that quantum meruit is a restitutionary claim based on unjust enrichment principles undoubtedly creates a difficulty in relation to "benefit". For example, in *Dickson Elliott Lonergan Limited v Plumbing World Limited* [1988] 2 NZLR 608 (HC) the plaintiff, a developer, learnt that the defendant was looking for new office accommodation. The plaintiff proposed to the defendant that it would purchase a building site, design and build a multi-storey office building to the defendant's requirements on the site, and lease it to the defendant. The defendant expressed interest in this and Heads of Agreement were drawn up. There were further negotiations and discussions between the parties and the plaintiff drew up a detailed proposal. The defendant indicated its approval and asked the plaintiff to begin work immediately on the project even though no contract had been agreed. The plaintiff did so. Subsequently the defendant asked the plaintiff to consider the possibility of developing another site, but the plaintiff refused and asked for a

commitment to its proposal. Ultimately the defendant decided to abandon the plaintiff's proposal and to proceed with a development on the alternative site. The plaintiff claimed from the defendant the cost of the work from the time that it responded to the defendant's request to commence work on the project until the project was abandoned.

[47] Eichelbaum J noted that no contract had been concluded, but the plaintiff had performed work at the request of the defendant in anticipation of a contract being concluded. The Judge held that the defendant was liable for the costs claimed, applying *William Lacey (Hounslow) Ltd v Davis* [1957] 1 WLR 932, *Craven-Ellis v Canons Ltd* [1936] 2 KB 403 and *British Steel Corp v Cleveland Bridge & Engineering Co Ltd* [1984] 1 All ER 504.

[48] It is difficult to see that the defendant in *Dickson Elliott Lonegan* derived any actual benefit from the work that the plaintiff performed, given that the project did not proceed and the defendant committed itself to an alternative project. But the work was carried out by the plaintiff at the defendant's request, in circumstances where both parties expected that they would shortly after enter into a contract under which the plaintiff would recover the costs at issue. Further, the plaintiff's work would have benefited the defendant had it not decided to back out of the project.

[49] A similar approach was taken by Winkelmann J in *VONZ*. At [81] the Judge said:

> Where a defendant has requested or fully accepted services in circumstances where he has gathered no residual objective benefit from those services, the plaintiff may still recover the reasonable cost of those services if the services were provided and accepted in circumstances where the defendant knew that the plaintiff expected to be recompensed for the services. A case where recovery was allowed, although there was no enrichment of the defendant (if benefit is measured as the economic value of the residue of the services) was *William Lacey (Hounslow) Ltd v Davis* [1957] 1 WLR 932.

[50] We will not attempt to resolve the doctrinal dispute here. It is sufficient to say that there is general agreement that a plaintiff will be able to establish a quantum meruit claim where the defendant asks the plaintiff to provide certain services, or freely accepts services provided by the plaintiff, in circumstances where the

defendant knows (or ought to know) that the plaintiff expects to be reimbursed for those services, irrespective of whether there is an actual benefit to the defendant.

[51] In the result, we do not consider that there was any prejudice to Morning Star in the granting of leave to amend, nor do we consider that the Judge was wrong to hold Morning Star liable under a quantum meruit for the DMA costs.

[52] The granting of leave was a matter for the discretion of the Judge. Accordingly this Court will intervene only if Morning Star can show that the Judge acted on a wrong principle, took irrelevant matters into account, failed to consider relevant matters or reached a view which is so unreasonable as to be plainly wrong.

[53] The only basis on which it is said that the Judge erred is the alleged prejudice to Morning Star in allowing the amendment. Mr Latton said that Morning Star was prejudiced because it did not have the chance to adduce evidence to the effect that it derived no benefit from the work undertaken by Canam. As we have determined that it was not necessary for Canam to establish that Morning Star had obtained an actual benefit, further evidence directed to that would not have assisted Morning Star. We consider that the Judge was entitled to conclude that Morning Star had requested that Canam perform the DMA work and that, as Canam would have recovered the costs of that work under the main construction contract, there was an expectation that Canam would be reimbursed for its work.

[54] We do not accept that Morning Star should have been able to lead further (unspecified) evidence on the question whether the DMA work was covered by the WTA or on the question whether it ought to have known that Canam expected to be paid for its work. The first matter was the subject of evidence and argument at trial, and the Judge made findings that were open to him on the evidence. Further, as we have said at [36] above, whether or not the work was carried out under the WTA is not determinative. The second matter is essentially unarguable, particularly because, as the Judge noted (at [79] and [130]), Mr Morgenstern indicated to Canam as late as 25 June 2003 that it would be paid for its work. In other words, Morning Star accepted that Canam should be paid for its work.

Costs appeal

[55] Costs are a matter of discretion. Normally they follow the event.

[56] Mr Latton submitted that the Judge had made no allowance for Canam's lack of success on its argument that the main construction contract had been agreed. Mr Latton accepted that the argument had not required much in the way of additional evidence, but said that there were extensive written submissions on the point.

[57] We have summarised at [25] above the Judge's reasons for making an extra costs award under Rule 48C(3)(d). The Judge did not specifically refer to the matter raised by Mr Latton. It may be that it was not raised at the time. In any event, we are not persuaded that the costs award made by the Judge was plainly wrong. The factors relied upon by the Judge were sufficient to justify his decision, even if the point made by Mr Latton had been taken into account.

Decision

[58] The appeal is dismisssed. Morning Star must pay Canam costs of $6,000 in this Court, plus usual disbursements.

Solicitors:
Lowndes Associates for Appellant
Simpson Grierson for Respondent