

FAMILY LAW PROPERTY Application by wife to be appointed as receiver manager application granted question of costs reserved FAMILY LAW PRACTICE AND PROCEDURE Directions made re filing of documents directions made for the discovery of documents application adjourned to a fixed date for mention Family Law Act 1975 (Cth) APPLICANT: Ms Booth RESPONDENT: Mr Booth FILE NUMBER: AYC 468 of 2010 DATE DELIVERED: 18 August 2014 PLACE DELIVERED: Melbourne PLACE HEARD: Melbourne JUDGMENT OF: Benjamin J HEARING DATE: 18 August 2014 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr Ham SOLICITOR FOR THE APPLICANT: Richmond & Bennison COUNSEL FOR THE RESPONDENT: Mr Booth in person SOLICITOR FOR THE RESPONDENT: In person ORDERS These proceedings be listed for mention before me on 23 January 2015 at 4pm. That as and from 1 December 2014 the wife be appointed receiver manager for the purpose of:- Negotiating any contract required by G Pty Ltd for the remediation of the site at E Street, F Town; and Executing the contract on behalf of the husband and wife for that purpose. Order 2, above, shall suspend in the event that the husband obtains on or before the 30 November a certificate from the Environmental Protection Agency that the property is clear of the environmental damage and is able to be sold without the impediment of the environmental damage. Leave is given for the parties to attend via telephone link should they require, noting that at the mention I will be directing that there be:- updated valuation evidence if the property is able to be put in a position to be sold; discovery of financial records; and affidavit(s), including affidavits already filed and relied upon. Costs be reserved. IT IS DIRECTED A transcript of the judgement be taken out and placed on the court file. IT IS NOTED It is likely that the previous valuers, H Valuers, update their valuation on the property. IT IS CERTIFIED Pursuant to Rule 19.50 of the Family Law Rules 2004 it was reasonable to engage counsel to attend. IT IS NOTED that publication of this judgment by this Court under the pseudonym Booth & Booth has been approved by the Chief Justice pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth).

FAMILY COURT OF AUSTRALIA AT MELBOURNE FILE NUMBER: AYC 468 of 2010 Ms Booth Applicant And Mr Booth Respondent REASONS FOR JUDGMENT This is a continuation of proceedings between a husband and wife arising out of the breakdown of the marriage and the

property issues arising therefrom. The wife seeks two orders. Firstly, that she be appointed receiver manager to negotiate with G Pty Ltd and presumably the Environmental Protection Agency of New South Wales in respect of the site of a service station at E Street, F Town, including executing documents on behalf of her and the husband. Secondly, she seeks the payment of a sum totalling some \$10,442.33 by way of interim property orders made by me in December last year. The parties have been in conflict for some time and I repeat and reiterate that history which I set out in my reasons for judgment delivered ex tempore on 16 December 2013. Central to this dispute is the parties' interest in a property at E Street, F Town. This was, as I said, a former service station where there has been significant environmental damage done and which the State of New South Wales requires to be remediated. G Pty Ltd has shown a willingness to remediate the site but has not exculpated the parties in relation to any claim which they may make against the parties for the cost of remediation. When the matter came before me last year, G Pty Ltd had offered the parties an agreement whereby G Pty Ltd would lease the premises, or most of the premises and there is an argument as to the extent of that payment of some 50-odd thousand dollars a year and attend to the remediation sufficient to meet the concerns of the State Environmental Protection Agency. The husband said that he wanted to remain on the property, run his business and perhaps set up a service station business. He said it would make sufficient money for him to pay the wife a sum of money to which she would otherwise anticipate had G Pty Ltd have leased the property. The husband said he was in a better position knowing the commercial side of the transactions and the status of the site to deal with that aspect of it. Since that time, a number of things have happened which are not in dispute. Firstly, the husband has not paid to the wife the money to which he said he would pay which is currently in arrears of some \$10,442.33. The husband claims that the reason this money has not been paid is that the wife withdrew her consent to a signage which would have enabled the service station to operate at that time. He says the wife signed the document. The wife says she didn't sign the document. I am not, at this stage, in a position to make a finding, nor should I because I would have to see that entirely in context. This year, G Pty Ltd said that it would offer a larger sum, that is, \$60,000, to lease the property and undertake the remediation work. The husband says that the work

that he has undertaken has reduced the level of toxicity, if that's the right word, from two point something metres to four millimetres or something along that line. I take it, from what the husband is saying, that there was buckets of environmental damage there and now there's minuscule environmental damage there. The husband says that he understands the block better than others do, even though he has no formal qualifications and as there's no flow of water through the property, as I understand it, that this method which is a slow method, is likely to achieve a result much faster. On the husband's evidence, the site could be cleared within a period of four weeks, although when pressed in submission, he says it could take longer, depending on who has to give the certificates. The wife, on the other hand, as has been the history of this matter, has been left out of negotiations, barely understanding what negotiations take place and in circumstances where she has little trust in the accuracy of what is said by the husband, and in circumstances where, if an order had been made last year that G Pty Ltd had access to the site she would be receiving income from the property which she is now not receiving bearing in mind the circumstances. The concern that the wife has is that if the husband continues to approach the matter the way he is approaching it, it may induce G Pty Ltd to walk away from the process and leave it to him which means that she would be tied up forever in the circumstances in which she finds herself. The husband says if the wife interferes with the commercial arrangements, the property won't be secured and cleaned and put in a position where it is free of the environmental damage. The husband has made it clear that he wishes to acquire the property although there is no evidence before me as to how he can finance that and what his circumstances are to enable that to occur. My task, as the husband rightly says, is not to become involved in the commercial dispute between the parties, but to preserve the property for the parties so that there is something for distribution at the conclusion of this process. I indicated to the parties that I would retain this matter. I passed it back last year in the likelihood that it would take many years for this remediation work to be undertaken. If the husband is right, the remediation work will be completed relatively quickly. I intend to give him some time to complete that remediation work, Mr Ham, but put in place an order that if it is not completed within a reasonable period of time, that your client will end up managing the site as she seeks. That will then add some incentive to

the husband to get the work done in that time and if it is done, well then there is no need for that to occur. If the work is not done, then the wife can take such steps as she considered appropriate to enter into negotiations with G Pty Ltd and the Environmental Protection Agency. I was going to order an updated valuation but my fear with that is that if the site is not as optimistically in the state that the husband says, and the certificates to enable the property to be sold are still months or even longer away, I will not at this stage impose upon the parties the cost of obtaining an updated valuation which will need to be updated again. However, I intend to bring this matter back before me in early January 2015 for directions for trial. So that if all is done, then I can order an up-to-date valuation. I can order discovery and I can order the filing of affidavits or the reliance on existing affidavits because I am concerned about the costs that these parties are exposed to. I certify that the preceding fourteen (14) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Benjamin delivered on 18 August 2014. Associate: Date: 18 August 2014 AustLII: Copyright

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