

11/7
IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

**NOT
RECOMMENDED**

1036

CP.877/86

BETWEEN

EURO-NATIONAL
CORPORATION LIMITED
AND OTHERS

Plaintiffs

AND

UNITED RESOURCES
INVESTMENT HOLDINGS
LIMITED AND OTHERS

Defendants

CP.886/86

BETWEEN

NEW ZEALAND OIL & GAS
LIMITED

Plaintiff

AND

EURO-NATIONAL
CORPORATION LIMITED

Defendant

CP.905/86

BETWEEN

UNITED RESOURCES
INVESTMENT HOLDINGS
LIMITED

Plaintiff

AND

EURO-NATIONAL
CORPORATION LIMITED

Defendant

Hearing: 30 July 1986

Counsel: J.A. Farmer QC and C.J. Allan for
Euro-National Corporation Ltd
R.H. Hansen and R.D.C. Hindle for United
Resources Investment Holdings Ltd
L.L. Stevens and F.J. Thorp for New
Zealand Oil & Gas Limited
R.J. Craddock QC and G.C. Everard for
Oil Fields No Liability

Judgment: 30 July 1986 (at 12 noon)

(3)

(ORAL) JUDGMENT OF BARKER J

On 24 July 1986, late in the day, I granted an ex parte application for an interim injunction, brought by Euro-National Corporation Limited ('Euro-National'). This injunction prevented Oil Fields No Liability ('Oil Fields') from exercising some 13.33 million options in New Zealand Oil & Gas Limited ('NZOG'); it also prevented Oil Fields from dealing in or disposing of the said options. The injunction also prevented United Resources Investment Holdings Limited ('United Resources') from disposing of 3.7 million shares in Oil Fields. I shall refer to this injunction as the 'Thursday injunction').

Euro-National had given notice of a takeover of both United Resources and NZOG; takeover intention was communicated to the Stock Exchange on 9 July 1986. On the same day, Oil Fields purchased options from United Resources in partial consideration of allotments of Oil Fields shares from United Resources at a discount (so it is asserted by Euro-National).

The Thursday injunction was issued ex parte on the basis, as put to me by Euro-National, that its takeover offer was being mailed to shareholders the following day, and that, to allow Oil Fields and United Resources to exercise or deal in the options would be to dilute the capital in NZOG and to, in effect, frustrate the takeover offer.

The shareholding position in the various actors in this drama is difficult to understand; this particular battle is all about control of NZOG. Euro-National wishes to acquire over 51% of NZOG. At present NZOG owns 25% of United Resources; United Resources owns 46% of Oil Fields; Oil Fields owns 21% of NZOG. However, if Oil Fields

exercises the options, it would hold 39% of NZOG. The options referred to earlier are therefore obviously crucial from the point of view of exercising control of NGOG.

On the following day, the course of the normal Chambers list was interrupted by counsel wishing to see me urgently to obtain injunctions on behalf of United Resources and NZOG to restrain Euro-National from sending out the takeover offers to shareholders of NZOG. I granted those injunctions (the 'Friday injunctions'), to enure until yesterday, 29 July 1986, on the basis that they were necessary to preserve the status quo. They were reserved until today. Counsel for NZOG and United Resources had received the injunction papers only the preceding evening; they were unable to present affidavit evidence in support of the interim injunctions which they sought *ex parte*. However, counsel advised me (a) that there were breaches by Euro-National of the takeover provisions of the Companies Act and (b) that each plaintiff was in a position to give an undertaking as to damages, and indeed gave that undertaking. On that basis I granted the Friday injunctions.

Euro-National has now applied to set aside the Friday injunctions; some 2 hours of the Court's time were occupied this morning in arguing whether those applications should be adjourned. No application to set aside has yet been filed in respect of the Thursday injunction, but I was advised by counsel for the defendants that applications would be made.

Mr Craddock, on behalf of Oil Fields, which was not the recipient of the Thursday injunction, nevertheless mounted the principal argument in support of the application for an adjournment; he received support from counsel for United Resources and NZOG.

The thrust of the argument in support of the adjournment is that all applications to set aside both lots of injunction should be heard together; by seeking and obtaining an injunction preventing Oil Fields from exercising its options, Euro-National has taken Oil Fields out of contention purposely, to enable it to succeed in its takeover bid without opposition; the submission stated that Euro-National could then change the Boards of NZOG and United Resources, having its principal contender for control effectively neutralised by the Thursday injunction.

The principal reason for the adjournment was said to be that uncertainty would arise as to who owns the options; the consequences could vary depending on the ultimate outcome of the applications to rescind the Thursday injunction. It was also said that Euro-National, in that injunction, failed to make proper disclosure to the Court of various important matters.

Of course, I cannot make any finding on that or on the other contention that Euro-National was merely using the Court as a pawn in its game to achieve control of NZOG. Those matters will have to be determined at a final hearing.

Mr Stevens suggested that I look at the possible outcome of the litigation. If the plaintiff Euro-National fails to hold the Thursday injunction, then Oil Fields ought to have been free all along to have exercised its options; however, if Euro-National succeeds, then the ownership of the options would go to United Resources and United Resources ought therefore to have been free to have exercised the options and ultimately control of NZOG.

Mr Farmer opposed the application for the adjournment; he was prepared to deal with the motion to set aside the Friday injunctions on the papers before me without filing an answering affidavit. He submitted that there could be

no prejudice to Oil Fields or United Resources, and that there was no cause of action to sustain the Friday injunction.

I should mention that, as a fall-back position, Mr Hansen, on behalf of United Resources, had filed an application for variation of the Thursday injunction to prevent Euro-National from sending out its takeover offers. This application would be considered only if the application for adjournment of Mr Farmer's application to set aside were refused.

It seems to me that this case ought to be determined in a final manner as soon as possible. There will need to be further documentation. There certainly need to be proper pleadings because no statements of defence have yet been filed. It seems to me desirable that the matter be considered by the Court on an application for perpetual injunction on both sides, rather than have it considered on the basis of interim injunction applications, applications to set aside and possible appeals from decisions on those matters; time and expense would be expended and there would not be a final resolution of the true issues between the parties.

Whilst I have some sympathy for Mr Farmer's point of view that the basis for the Friday injunctions was not particularly strong, it seems to me that these two matters are completely interlocked; Euro-National, if it ultimately succeeds, will be protected by the undertakings as to damages given by both United Resources and NZOG.

There are other matters also which are of relevance in coming to the conclusion that I should grant the application for adjournment on terms. Mr Craddock pointed out that the small shareholder will be bound if he accepts Euro-National's offer and will therefore be 'locked in'. Other shareholders will not know what major shareholders

or option holders are going to do about the takeover bid because Oil Fields and United Resources are forbidden to exercise their options. The directors' position must also be considered. They are defendants to the Thursday injunction. They appear through Mr Craddock merely to acknowledge service of relevant papers; they are not participating in this hearing and they may wish to be separately represented.

The Court's calendar is extremely crowded at the moment and there are great difficulties in granting fixtures and in effect supplanting cases where the parties have been waiting patiently for fixtures. However, I have discovered that, in my calendar, there would be room on Wednesday 3 and Thursday 4 September 1986 for a full hearing of all actions. In other words, I shall hear then the applications for permanent injunctions, rather than go through the unsatisfactory proceeding of hearing applications to set aside interim injunctions where the Court cannot make findings of fact. Before recording further orders, I shall invite comment and discussion about possible timetable.

After discussion with counsel, I make the following orders under r.437:

1. The plaintiffs in CP.886/86 and CP.905/86 are to file a statement of claim within 2 days;
2. All three proceedings - CP.877/86, CP.886/86 and CP.905/86, be heard together;
3. Evidence-in-chief in all three proceedings is to be by affidavit subject to rights of cross-examination;
4. The defendants in CP.877/86 must file a statement of defence by 8 August 1986;

5. The defendant in both CP.886/86 and CP.905/86 must file a statement of defence by 15 August 1986;
6. All parties must give discovery by 22 August 1986;
7. The plaintiffs in each of the three proceedings are to file a praecipe to set down by 22 August 1986; the plaintiff only need sign in each case;
8. The interim injunctions already made enure pending further order of the Court;
9. The hearing of the applications for permanent injunction in each case of the three proceedings take place on Wednesday 3 September and Thursday 4 September 1986. I note counsel's acknowledgement of 2 days being needed for the hearing;
10. Prior to the hearing, counsel are to agree on a bundle of documents, correctly numbered and paginated, to be presented to the Court;
11. Further affidavits on behalf of any plaintiff in any of the three proceedings are to be filed by 8 August 1986;
12. Answering affidavits by defendants are to be filed by 22 August 1986;
13. Affidavits strictly in reply are to be filed by 29 August;
14. Liberty to apply is reserved to all parties.

Further Judgement at 4.50 p.m.

After my judgment was delivered earlier this morning, counsel and the parties have conferred with a view to settlement.

Mr Craddock, on behalf of all counsel, indicates the following terms of settlement:

1. All actions are discontinued;
2. All parties bear their own costs;
3. All injunctions are to be immediately discharged;
4. The plaintiffs in CP.877/86 undertake:
 - (a) Not to raise in these or any other proceedings issues arising in that action;
 - (b) Not to support, assist or encourage in any way the raising by any other person of such issues;
 - (c) Not to change their existing takeover offers except to correct the matters referred to in the affidavit of Roy Anthony Radford filed in CP.886/86.
5. The plaintiffs in CP.886/86 and CP.905/86, together with Oil Fields, undertake:
 - (a) Forthwith to consider the corrected takeover offers proposed by Euro-National and, within 24 hours, to notify Euro-National of any defects arising from any correction;
 - (b) Subject to the correction of any such defects (within the minimum acceptance provision) not to challenge in legal proceedings or to support, assist or encourage such a challenge by any other person to the corrected takeover offers or any

disparity between them and the notice of takeover offers dated 7 July 1986.

6. For the purpose of clarification of Clause 5 hereof, it is hereby acknowledged that the plaintiffs in CP.886/86 and CP.905/86 and Oil Fields will not challenge in legal proceedings the said minimum acceptance provision or assist, encourage or support any other person to do so;
7. This is intended to be a full and final settlement of the differences between the parties and all acknowledge that they do not have in their contemplation any further steps or proceedings against the others;
8. The terms of this settlement and the undertakings given bind also the directors of all parties.

After discussion with counsel, it was agreed that I should make the following orders by consent:

- (a) All three proceedings - i.e. CP.877/86, CP.886/86 and CP.905/86 - are struck out;
- (b) All injunctions are discharged;
- (c) All procedural orders made earlier today are vacated.

It remains only for me to congratulate the parties on achieving settlement and to congratulate counsel involved.

R. D. Barker, J.

SOLICITORS:

Rudd Watts & Stone, Auckland, for Euro-National Corporation Limited.
 Simpson Grierson, Butler White, Auckland, for United Resources Investment Holdings Limited
 Russell, McVeagh, McKenzie, Bartleet & Co, Auckland, for New Zealand Oil & Gas Limited
 Nicholson Gribbin & Co, Auckland, for Oil Fields No Liability.