



Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

REVISED COPIES ISSUED
State Reporting Bureau

Date: 3 July, 2003

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

de JERSEY CJ

No 10355 of 2002

ROBERT WILLIAM GRANT

Plaintiff

and

McROSS DEVELOPMENTS PTY LTD

Defendant

BRISBANE

..DATE 16/06/2003

JUDGMENT

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE CHIEF JUSTICE: There is a discretion to award indemnity costs in circumstances where the unsuccessful party's maintenance of a particular position has been unreasonable and clearly so. As would be apparent from my reasons for Judgment, I thought the position clear; that is that a proposal should be regarded as a proposal of the Council only where the Council had proceeded through its regular decision-making process.

As Mr Cameron points out, the law obtaining in this State, so far as it had been declared in *Gagliardi v Lamont*, would support that view fairly plainly. Ms Dalton has sought to distinguish factually this case from that and that may be arguable but I feel that whether indemnity costs should be awarded should await the outcome of the appeal process. If indeed the Court of Appeal, or any subsequent Court, considers the case as clear as I have in favour of the plaintiff, then there may be an argument for the elevation of the costs which should currently - perhaps on an interim basis, be set to be assessed on the standard basis, to recovery on the indemnity basis.

I will therefore order in terms of paragraph 6 of the draft but amend it in this way; that the defendant pay the plaintiff's costs of and incidental to the proceeding, including any reserved costs, such costs to be assessed on the standard basis, reserving the question whether, in addition, indemnity costs should be allowed, to await the outcome of any appeal.

I would not wish it to be thought that the plaintiff's
successfully opposing an appeal, would necessarily mean an
entitlement to indemnity costs. As I say, the issue may come
down to whether the matter is felt, in the end, by the Court
of Appeal, to be as plain as I have presented it to be in my
reasons for Judgment. Otherwise order as per draft, which I
have initialled. Thank you.

1

10

20

30

40

50