SUPREME COURT OF QUEENSLAND

CITATION:	*Taylor & Anor v Hobson & Ors* (No 2) [2017] QSC 157
PARTIES:	**ALAN JOHN JEFFREY TAYLOR** (first plaintiff) And **WANDANI PTY LTD** (second plaintiff) **v** **RICHARD HOBSON** (first defendant) And **HOBSON INVESTMENTS (NQ) PTY LTD (ACN 102 617 050)** (second defendant) And **ROBERTS NEHMER McKEE** (third defendant) And **MALCOLM FISHER** (fourth defendant)
FILE NO/S:	S15 of 2014
DIVISION:	Trial Division
PROCEEDING:	Interlocutory Application
ORIGINATING COURT:	Supreme Court of Queensland at Mackay
DELIVERED ON:	26 July 2017
DELIVERED AT:	Rockhampton
HEARING DATE:	On the papers – final submissions received 5 July 2017
JUDGE:	McMeekin J
ORDER:	**1. The plaintiffs to pay the costs of the first and second defendants.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS – COSTS – GENERAL RULE – GENERAL PRINCIPLES AND DISCRETION – where the proceedings as between the plaintiffs and the first and second defendants were formerly ordered to be stayed – where the plaintiffs applied to have the

stay lifted – where the plaintiffs argued that the circumstances justifying the stay were no longer operative – where the first and second defendants argued that the Deed effected no material changes in circumstances – where the defendants were successful and the stay was not lifted – whether there should be no order as to costs – whether the costs should not follow the event.

Uniform Civil Procedure Rules r 681

Green v Schneller [2003] NSWSC 202, considered

Taylor & Anor v Hobson & Ors [2016] QSC 226, cited

Taylor & Anor v Hobson & Ors [2017] QSC 139, cited

COUNSEL: PJ McCafferty for the plaintiffs

KC Fleming QC for the first and second defendants

SOLICITORS: Bartley Cohen for the for the plaintiffs

Connolly Suthers for the first and second defendants

[1] **McMeekin J:** On 23 June 2017 I published my reasons in this matter (see [2017] QSC 139) and reserved the question of costs. The parties have now filed submissions.

[2] On 6 October 2016 Boddice J ordered that the proceedings as between the plaintiffs and the first and second defendants be stayed: see [2016] QSC 226. The plaintiffs applied to have the stay lifted arguing that the circumstances justifying the stay were no longer operative by reason of the terms of a Deed entered into between the plaintiffs and the third and fourth defendants. The first and second defendants argued that the Deed effected no material changes in circumstances. Effectively the defendants were successful before me.

[3] Normally costs should follow the event: r 681 UCPR. The plaintiffs now submit that there should be no order as to costs because:

(a) The defendants failed in their argument that the "impermissible intermeddling" found by Boddice J was incurable;

(b) The defendants' solicitors had refused to give the plaintiffs any reason why the Deed did not address the concerns identified by Boddice J;

(c) The defendants delayed until the last minute in identifying any decisive point;

(d) Had the defendants identified such a precise point then the plaintiffs would not have proceeded with the application and costs would have been saved.

[4] As to the first point I did not understand that the defendants' final submission was that the problems identified by Boddice J were incurable. Certainly I take it that Boddice J did not think that. Presumably his Honour would have struck out the proceedings or stayed them permanently if he was of that view. Even if that was the submission advanced, the mere fact of an unsuccessful argument taking up very little time, combined with successful arguments, would not normally deprive a successful party of their costs.

[5] As to the remaining three propositions they each appear to assume that there is an obligation on the opponent to alert a party to the problems with their case. The proposition is a novel one in my experience. The only authority cited is *Green v Schneller* [2003] NSWSC 202 per Simpson J at [32]. There, one party overlooked the necessity of obtaining the leave of the Federal Court before attempting to proceed in the State Court. The judgment suggests that the problem had occurred before in related proceedings. It might be understandable there that the judge would be exasperated at a phone call not avoiding an entirely wasted day in Court. To keep back a point like that is certainly not one to be encouraged. But the situation here is far removed from that pertaining in *Green*.

[6] Here there was a contest as to the effect of the Deed. There was no oversight here by the plaintiff's solicitors of some written and well known law. The solicitors drafted the document, briefed counsel and had counsel argue that the Deed achieved what was intended. I held that they failed in that endeavour. That is in no sense the defendants' fault.

[7] In any case the last point made is not right – the plaintiffs did not withdraw when they had the defendants' arguments but urged that they were right and the defendants wrong.

[8] There is no good reason shown why costs should not follow the event. The order will be that the plaintiffs pay the costs of the first and second defendants.