

SUPREME COURT OF QUEENSLAND

CITATION: *Bourne v Queensland Building and Construction Commission (No 2)* [2018] QSC 311

PARTIES: **KATRINA MARGARET BOURNE**
(applicant)
v
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
(respondent)

FILE NO/S: BS No 11056 of 2017

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 20 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 10 October 2018

JUDGE: Douglas J

ORDER: **1. The applicant is to pay the respondent's costs on the standard basis including reserved costs of and incidental to the applicant's originating application filed 23 October 2017 and the respondent's application filed 25 January 2018.**

2. The applicant is to pay the respondent's costs thrown away by the adjournment on 28 March 2018 on an indemnity basis.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – OTHER PARTICULAR CASES AND MATTERS – where the respondent paid money to a former client of the applicant's company pursuant to a statutory insurance scheme – where the applicant owed that money as a debt to the respondent – where the respondent commenced proceedings to recover that debt – where the applicant sought judicial review of the respondent's decision to commence those proceedings – where the respondent brought an application to have the applicant's judicial review application dismissed pursuant to s 48 of the *Judicial Review Act 1991* (Qld) – where the applicant's application failed and the respondent's application succeeded – where the respondent submitted that

costs should not follow the event – where the respondent submitted that procedures adopted by the respondent in QCAT proceedings prevented the applicant from challenging the payment made pursuant to the statutory insurance scheme – whether costs ought to follow the event

SOLICITORS: Michael Ohlson for the applicant
Rostron Carlyle Lawyers for the respondent

- [1] The respondent succeeded in an application pursuant to s 48 of the *Judicial Review Act* that the applicant's originating application filed 23 October 2017 be dismissed. The parties subsequently filed written submissions in respect of the costs.
- [2] The applicant submits that there are special circumstances concerning the respondent's pre-litigation conduct which the court may consider as grounds for departing from the general rule that costs follow the event. The circumstances relate to the issuing of a notice of debt to a company said to be the builder which had undertaken building works the subject of proceedings before the Queensland Civil and Administrative Tribunal. The assertion appears to be that the procedures in QCAT adopted by the respondent denied the company of which the applicant was a director and member its rights to challenge effectively the scope of works required of it and the \$195,000 payment made by the respondent pursuant to s 86 of the *Queensland Building and Construction Commission Act 1991*. The conduct was said to justify a decision not to make a costs order in favour of the respondent on this occasion.
- [3] The respondent argues, however, that any alleged conduct complained of by the applicant in respect of the respondent's conduct concerning that company may be curable by costs orders to be made in the District Court proceeding instituted by the respondent against the applicant. Nor, it submitted, do those considerations affect the issue which was determined by me about whether the issuing of the claim in the District Court was a decision of an administrative character made under an enactment.
- [4] It is also apparent on the evidence filed in the affidavit of Ms Collett on 19 October 2018 that the problems associated with the application were pointed out to the applicant in correspondence of 21 December 2017 inviting her to withdraw her application with no order as to costs by 10 January 2018. There were also problems in the conduct of the proceedings caused by late adjournments sought by the applicant and changes in the submissions relied on by her which had the effect that a hearing scheduled for 28 March 2018 did not proceed in circumstances where the preparation for that hearing was rendered useless. The costs of that hearing were reserved.
- [5] In the circumstances, there is no reason why the normal rule as to costs should not apply and there seems to me to be good reason to order that the respondent's costs thrown away by the adjournment on 28 March 2018 be paid on an indemnity basis as was sought by the respondent. Accordingly, I shall order as follows:
1. The applicant is to pay the respondent's costs on the standard basis including reserved costs of and incidental to the applicant's originating application filed 23 October 2017 and the respondent's application filed 25 January 2018.

2. The applicant is to pay the respondent's costs thrown away by the adjournment on 28 March 2018 on an indemnity basis.