

# SUPREME COURT OF QUEENSLAND

CITATION: *Wiltshire v Amos (No2)* [2019] QSC 1

PARTIES: **CHRISTOPHER WILTSHIRE**  
(appellant/first respondent)  
v  
**EDWARD AMOS**  
(respondent/applicant)  
And  
**EDWARD SKUSE**  
(not a party to the appeal/second respondent)

FILE NO/S: BS No 4199 of 2010

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: District Court at Brisbane – [2010] QDC 138 (Samios DCJ)

DELIVERED ON: 8 January 2019

DELIVERED AT: Brisbane

HEARING DATE: Last submissions received 17 October 2018

JUDGE: Crow J

ORDER: **1. The certificate of the costs assessor filed herein on 15 May 2012 be varied pursuant to rule 742 (6) (b) as follows:**

- (i) By deleting the words and figures ‘One hundred and twenty-nine thousand two hundred and thirty dollars and ninety cents (\$129,230.90)’ and substituting in lieu thereof the words and figures ‘One hundred and nineteen thousand six hundred and thirty dollars and ninety cents (\$119,630.90)’;**
- (ii) By deleting the figure \$6,145.00 and substituting in lieu thereof the figure \$3,145.00;**
- (iii) By deleting the figure \$123,085.90 and substituting in lieu thereof the figure \$116,485.90;**
- (iv) By deleting the figure \$132,463.80 and substituting in lieu thereof the figure \$122,863.80;**

- 2. The order of the deputy registrar made herein on 25 July 2016 be varied pursuant to rule 742 (6) (c) as follows:**
- (i) By deleting the figure \$132,463.80 where it twice occurs and substituting in lieu thereof the figure \$122,863.80 in each case;**
  - (ii) By, in order 2, deleting the date 16 May 2012 and inserting in lieu thereof the date 25 July 2016.**
- 3. The Respondent/Applicant pay to the Appellant/First Respondent 92% of his costs on a standard basis of and incidental to the review including the applications for directions before Justice Brown on 9 January 2018 and before Justice Bond on 27 February 2018.**

**CATCHWORDS:** PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where there is dispute as to the proper form of orders and costs

*Uniform Civil Procedure Rules 1999 (Qld)*  
*Wiltshire v Amos & Anor* [2018] QSC 224 related  
*Leonardi v Payne & Anor* [2017] QSC 319 cited

**COUNSEL:** K F Boulton for the applicant  
 F L Harrison QC with P G Jeffery for the respondent

**SOLICITORS:** Keller Nall & Brown for the applicant  
 Sharma Lawyers for the respondent

- [1] Pursuant to the orders made on 4 October 2018<sup>1</sup> further submissions have been received as to the proper form of orders and costs. There is a dispute in respect of both issues. The parties agree as to paragraph 1 of the order as set out below but disagree upon orders 2 and 4.
- [2] The parties differ with respect to the proper order the subject of paragraph 2(ii). The parties agree that paragraph 2(i) as set out below ought to be made, that is by correction of the deputy registrar’s order of 25 July 2016, by reducing the sum of \$132,463.80 by \$9,600 to \$122,863.80. Counsel for Mr Wiltshire argues that is the only order which is necessary, whereas Counsel for Mr Amos seek a further variation of the orders made by the deputy registrar of 25 July 2016 by the inclusion at paragraph 2(ii) as follows:

“(ii) By, in order 2, deleting the date 16 May 2012 and inserting in lieu thereof the date 25 July 2016.”

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<sup>1</sup> *Wiltshire v Amos & Anor* [2018] QSC 224.

- [3] Counsel for Mr Amos points out that although the costs certificate was filed on 16 May 2012, the deputy registrar did not make an order pursuant to r 740(1) until 25 July 2016 and accordingly the order does not take effect as a judgment of the court until 25 July 2016. This is relevant to the proper quantification of post-judgment interest under s 59 of the *Civil Proceedings Act* 2011 (Qld). I accept that submission as being correct. It is in accordance with the reasons of North J in *Leonardi v Payne & Anor* [2017] QSC 319.

## Costs

- [4] As recorded in my reasons<sup>2</sup> Mr Wiltshire has obtained substantial success. The only reduction in costs was \$9,600, which occurred as a result of the concession made at hearing on 14 June 2018. In his counsel's submissions, Mr Wiltshire concedes that there ought to be "a reasonable reduction to reflect the fact that the costs assessment contained errors which resulted in the assessment being reduced by \$9,600". That is a fair concession. The conceded amount is approximately 8% of the assessed costs figure at \$122,863.80. It is fair and reasonable to reduce the standard costs assessment by 8%.
- [5] Mr Wiltshire seeks his costs, not only of the review hearing, but also of the prior applications before Brown J on 9 January 2018 and Bond J on 27 February 2018. This is resisted by counsel for Mr Amos because it is asserted that Mr Amos had substantial success in the application before Bond J on 27 February 2018 insofar as Bond J ordered the costs assessor, Mr Skuse, to provide written reasons over the opposition from Mr Wiltshire. The opposition provided by counsel for Mr Wiltshire appearing before Bond J on 27 February 2018 was formal<sup>3</sup> and "not seriously opposed,"<sup>4</sup> that is, the opposition on behalf of Mr Wiltshire was merely to recite Mr Skuse's position as set out in facsimile correspondence that he had not been paid for the provision of reasons, whereas it was proved in evidence by tender of the cheque that Mr Skuse was paid. As it transpired, with the delivery of the reasons, which were of great assistance, the review hearing was conducted efficiently within one day and resulted in the very limited success in Mr Amos by the reduction only of the agreed amount of \$9,600.
- [6] The costs of the applications before Brown J on 9 January 2018 and Bond J on 27 February 2018 were necessary steps in the review application which resulted in the provision of the cost assessor's reasons. This in turn resulted in the minor reduction of the assessed sum by \$9,600. The costs therefore of the hearings before Brown J and Bond J were a necessary part of the litigation process. As the costs were reserved pursuant to r 698 of the *Uniform Civil Procedure Rules* 1999 (Qld), the costs followed the event "unless the court orders otherwise". In the present case and for the reasons I have given, it is not appropriate that there be order otherwise.
- [7] Accordingly I make the following orders:
1. The certificate of the costs assessor filed herein on 15 May 2012 be varied pursuant to rule 742 (6)(b) as follows:

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<sup>2</sup> [2018] QSC 224.

<sup>3</sup> T1-18/5 – 7.

<sup>4</sup> T1-23/9.

- (v) By deleting the words and figures ‘One hundred and twenty-nine thousand two hundred and thirty dollars and ninety cents (\$129,230.90)’ and substituting in lieu thereof the words and figures ‘One hundred and nineteen thousand six hundred and thirty dollars and ninety cents (\$119,630.90)’;
  - (vi) By deleting the figure \$6,145.00 and substituting in lieu thereof the figure \$3,145.00;
  - (vii) By deleting the figure \$123,085.90 and substituting in lieu thereof the figure \$116,485.90;
  - (viii) By deleting the figure \$132,463.80 and substituting in lieu thereof the figure \$122,863.80;
2. The order of the deputy registrar made herein on 25 July 2016 be varied pursuant to rule 742 (6)(c) as follows:
- (iii) By deleting the figure \$132,463.80 where it twice occurs and substituting in lieu thereof the figure \$122,863.80 in each case;
  - (iv) By, in order 2, deleting the date 16 May 2012 and inserting in lieu thereof the date 25 July 2016.
3. The respondent/applicant pay to the appellant/first respondent 92% of his costs on a standard basis of and incidental to the review including the applications for directions before Justice Brown on 9 January 2018 and before Justice Bond on 27 February 2018.