

SUPREME COURT OF QUEENSLAND

CITATION: *Greenhill One Pty Ltd v Dreamtech Designs Pty Ltd & Anor*
(No 2) [2019] QSC 58

PARTIES: **GREENHILL ONE PTY LTD**
(plaintiff)
v
DREAMTECH DESIGNS PTY LTD & SAN
CRISTOBAL PTY LTD
(first defendants)

FILE NO: BS742 of 2018

DIVISION: Trial Division

PROCEEDING: Costs

DELIVERED ON: 15 March 2019

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Mullins J

ORDER: **The first defendants must pay the plaintiff's costs of the hearing on 30 November 2018, but that otherwise the parties' costs of the summary judgment application should be each party's costs in the proceeding.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS — GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the first defendants applied for summary judgment – where the summary judgment application was dismissed – where the first defendants failed to discharge the onus of showing an entitlement to summary judgment – whether costs should follow the event or whether another costs order was appropriate

Uniform Civil Procedure Rules 1999 (Qld), r 299, r 681

Greenhill One Pty Ltd v Dreamtech Designs Pty Ltd & Anor
[2019] QSC 20, related

COUNSEL: A P J Carroll (*Sol*) for the plaintiff
D Kelly, director of each first defendant, for the first defendants

SOLICITORS: Carroll Legal & Compliance for the plaintiff

- [1] On 18 February 2019 I published my reasons for dismissing the first defendants' application for summary judgment: *Greenhill One Pty Ltd v Dreamtech Designs Pty Ltd & Anor* [2019] QSC 20 (the reasons). The parties have made written submissions on costs. I will therefore determine the question of the costs of the summary judgment application on the papers.
- [2] In paragraph [45] of the reasons, I outlined my provisional view on the appropriate order for costs which was subject to receiving the parties' submissions on costs.

The plaintiff's submissions on costs

- [3] The plaintiff relies on r 299 of the *Uniform Civil Procedure Rules 1999 (Qld)* (*UCPR*) to submit that, as the first defendant was aware the plaintiff relied on the first defendant's breach of s 206(1) of the *Body Corporate Community Management Act 1997 (Qld)* that would entitle the plaintiff to have the application dismissed, or that the court would not be able to reach a conclusion on whether the first defendants had complied with s 206(1) or not, the first defendants should be ordered to pay the plaintiff's costs within a time specified by the court.
- [4] The plaintiff's alternative submission relies on r 681 of the *UCPR* to submit that nothing has been put before the court that should disturb the *prima facie* position that costs should follow the event. It is also argued that as a breach of s 206(1) is a matter of public policy, as the first defendants either breached that provision or failed to prove its compliance with that provision, they should bear the costs of their unsuccessful application for summary judgment.

The first defendants' submissions on costs

- [5] The first defendants rely on the broad discretion retained by the court in determining costs, even though r 681 of the *UCPR* embodies as the starting point the general proposition that costs should follow the event.
- [6] On the basis that the first defendants' lack of success on the summary judgment application reflects the court's decision that there was insufficient evidence before it to justify an order for summary judgment, either each party should bear its own costs or the appropriate time to deal with the costs of the summary judgment application will be at the conclusion of the proceeding. The plaintiff's s 206 "public policy" submission is irrelevant to the issue of costs on the summary judgment application, as that issue was left for trial.

What is the appropriate costs order?

- [7] In paragraph [45] of the reasons, I indicated my inclination that the first defendants should pay the plaintiff's costs of the hearing on 30 November 2018 (as that appearance was effectively wasted when no further relevant evidence was adduced by the first

defendants), but that otherwise the parties' costs of the application should be each party's costs in the proceeding.

[8] Although r 299 of the *UCPR* does apply when a summary judgment application is dismissed, the application in this matter was not determined on the basis of a point that entitled the plaintiff to have the application dismissed, but on the failure of the first defendants to discharge the onus of showing an entitlement to summary judgment, largely due to the state of the evidence at the time of the hearing of application and the allegations. As there were deficiencies in the plaintiff's affidavit from Mr Hague, as well as the evidence obtained by the first defendants from Mr Scott, I am not dissuaded from my provisional view that the first defendants should pay the plaintiff's costs of the hearing on 30 November 2018, but otherwise the parties' costs of the application should be each party's costs in the proceeding.

[9] The formal order will therefore be:

The first defendants must pay the plaintiff's costs of the hearing on 30 November 2018, but that otherwise the parties' costs of the summary judgment application should be each party's costs in the proceeding.