

# SUPREME COURT OF QUEENSLAND

CITATION: *Alexanderson Earthmover Pty Ltd v Civil Mining & Construction (No 2)* [2019] QSC 273

PARTIES: **ALEXANDERSON EARTHMOVER PTY LTD**  
(plaintiff)  
v  
**CIVIL MINING & CONSTRUCTION PTY LIMITED**  
(defendant)

FILE NO: 13314 of 2017

DIVISION: Trial Division

PROCEEDING: Costs of applications

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 6 November 2019

DELIVERED AT: Brisbane

HEARING DATES: Written submissions received 23 October 2019, 25 October 2019 and 29 October 2019

JUDGE: Ryan J

ORDER: **In the defendant's application filed 12 March 2019:**

- 1. the plaintiff is to pay the defendant's costs of the application;**

**In the defendant's application filed 16 November 2018:**

- 2. the parties are to bear their own costs;**

**In the plaintiff's application filed 16 November 2018:**

- 3. the plaintiff is to pay the defendant's costs of paragraphs 7, 8 and 9; and**
- 4. the plaintiff and the defendant are to bear their own costs of paragraphs 1, 2, 3, 4, 5 and 6.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW THE EVENT – mixed results – defendant with no interest in some of plaintiff's applications

*Mio Art v Macequest Pty Ltd and Others* (2013) QSC 271

COUNSEL: B E Codd, with C M Matthews for the plaintiff  
L M Campbell for the defendant

SOLICITORS: Frigo Adamson Legal Group Proprietary Limited for the plaintiff  
Clayton Utz for the defendant

- [1] On 22 October 2019 I delivered judgment in this matter which involved three interlocutory applications: see *Alexanderson Earthmover Pty Ltd v Civil Mining & Construction* [2019] QSC 259. I allowed time for written submissions as to costs, which I have received and considered.
- [2] Some of the issues raised in the applications were interrelated. However, the defendant had no role to play in certain aspects of the plaintiff's application which occupied time at the hearing.
- [3] The defendant submits that overall, it was more successful than the plaintiff but acknowledges that with respect to some elements of the applications, the parties ought to bear their own costs. It urges me to make orders for costs of the separate applications now, rather than to reserve them.
- [4] The plaintiff submits that, applying a broad brush, success was evenly split and the appropriate order is that each party ought to bear its own costs, or alternatively, costs ought to be reserved.
- [5] I consider it appropriate to deal with the issue of the costs of the applications now – rather than to reserve them.
- [6] In making these orders for costs, I have borne in mind the usual, but not inflexible, rule that costs follow the event. While I have a broad discretion over costs, I would require a good reason not to exercise that discretion in favour of the successful party. Having said that, I ought not to follow the general rule blindly without regard to relevant considerations.

***Plaintiff's application filed 16 November 2018***

- [7] The defendant had no role to play in the plaintiff's (successful) application for access to the file and other documents and materials in related, earlier proceedings (*CMC v WICET*).
- [8] The defendant had no role to play in the plaintiff's (successful) application for relief from the implied undertaking in relation to *CMC v WICET* documents, to the extent to which the implied undertaking applied to the plaintiff. These matters were the subject of **paragraphs 7, 8 and 9 of the application**.
- [9] The plaintiff had limited success in its application to strike out paragraphs of the defence and counter claim (**paragraphs 1**). I struck out only one paragraph.

- [10] Since the plaintiff filed its application to strike out parts of the defence and counterclaim, the plaintiff filed two later versions of its statement of claim.
- [11] Some of the paragraphs of the defence, about which the plaintiff complained, responded to paragraphs of the statement of claim which had been amended after the defendant's response to them. The plaintiff nevertheless maintained its complaints.
- [12] In the case of those amended paragraphs, I permitted the defendant time to respond to them – deferring therefore any consideration of the adequacy of the response.
- [13] Also, some of the paragraphs of the defence about which the plaintiff complained responded to paragraphs of the plaintiff's statement of claim which I struck out with leave to re-plead.
- [14] In the case of those paragraphs, I permitted the defendant time to respond to the re-pleaded paragraphs – deferring therefore consideration of the adequacy of the response.
- [15] The plaintiff complained about paragraphs of the defence in which the defendant traversed an allegation. Rather than strike out those paragraphs, I ordered the defendant to amend its traversals by a certain date.
- [16] In respect of other paragraphs about which the plaintiff's complained, I ordered the defendant to provide certain particulars by a certain date.
- [17] Where the complainant about a paragraph was linked to a complaint about the inadequacy of the defendant's particulars, rather than strike out the paragraph, I ordered the defendant to provide relevant particulars of it by a certain date (**paragraphs 2 and 3**).
- [18] With respect to its application for disclosure (**paragraphs 4 and 5**), I required the defendant to disclose only one of the many documents sought.
- [19] I made no order that the defendant comply with practice direction 18 of 2018 (**paragraph 6**).
- [20] Overall, in my view, the plaintiff had very modest success in its application in so far as it concerned the defendant.

***Defendant's application filed 16 November 2018***

- [21] The defendant succeeded in its application to vary the order made by Brown J on 26 September 2018. However, as I noted in my judgment, had those representing the defendant been paying closer attention when the order was made, there would have been no need for the defendant to apply for its variation.

***Defendant's application filed 11 March 2019***

- [22] The defendant was successful in its application to strike out some of the paragraphs of the statement of claim about which it complained. I struck out, with leave to re-plead, those paragraphs of the statement of claim which involved an element of global causation.

[23] I also ordered the plaintiff to amend, or provide further particulars of, certain of its allegations in the statement of claim.

[24] On the whole, the defendant may be said to have been successful in this application.

***Costs order***

[25] In determining appropriate costs orders, I have had particular regard to the decision of Jackson J in *Mio Art v Macequest Pty Ltd and Others* (2013) QSC 271.

[26] I do not consider that success was evenly split in relation to the contested aspects of the application.

[27] The defendant was successful in its application of 16 November 2018 in the face of significant opposition to it by the plaintiff.

[28] The defendant was, on the whole, successful in its application of 11 March 2019.

[29] The plaintiff's application of 16 November 2018 included applications which were of no interest to the defendant. It had very modest success otherwise.

[30] I note that while AE was not on notice of some of the matters raised by CMC in its application, CMC was similarly not on notice of some of the matters raised by AE (by way of example, disclosure of item 16(kk)).

[31] I have taken a broad approach to the determination of appropriate costs orders in these matters and considered the outcome as a whole.

[32] I note the defendant's submission that it ought to have its costs thrown away because the plaintiff amended its pleadings twice after filing its application. I consider the appropriate and simplest way to reflect the plaintiff's modest success in its application is by way of not making such an order.

[33] I make the following orders –

- in the defendant's application filed 12 March 2019 – the plaintiff is to pay the defendant's costs of the application;
- in the defendant's application filed 16 November 2018 – the parties are to bear their own costs;
- in the plaintiff's application filed 16 November 2018 –
  - the plaintiff is to pay the defendant's costs of paragraphs 7, 8 and 9; and
  - the plaintiff and the defendant are to bear their own costs of paragraphs 1, 2, 3, 4, 5 and 6 of the application.