SUPREME COURT OF QUEENSLAND

CITATION:	*Project 88 TPF Pty Ltd v Open Projects Group Pty Ltd* [2020] QSC 208
PARTIES:	**PROJECT 88 TPF PTY LTD** (applicant) **v** **OPEN PROJECTS GROUP PTY LTD** (respondent)
FILE NO:	BS 14109 of 2019
DIVISION:	Trial Division
PROCEEDING:	Costs Decision after Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	14 July 2020
DELIVERED AT:	Brisbane
HEARING DATE:	On the papers
JUDGE:	Ryan J
ORDERS:	**1. With respect to the interlocutory applications heard by Daubney J, the applicant is to pay the respondent's costs.** **2. With respect to the originating application, the respondent is to pay the applicant's costs.**
CATCHWORDS:	PROCEDURE – COSTS – RECOVERY OF COSTS – where the applicant was successful in its application to set aside the statutory demand – where the parties agree that the respondent ought to pay the applicant's costs but the applicant seeks its costs on the indemnity basis, on the strength of its invitation to the respondent to withdraw the statutory demand – where the respondent suggested that the applicant's nomination of the original return date for the application was an abuse of process – whether the respondent brought an interlocutory application to have the hearing of the originating application brought forward from its return date – where there was nothing exceptional in the conduct of either party, nor any other good reason, to warrant an order that costs be paid on the indemnity basis
COUNSEL:	M E Clarke for the applicant C D Coulsen for the respondent
SOLICITORS:	MKW Legal for the applicant Morgan Conley Solicitors for the respondent

[1] On 15 June 2020, I granted the applicant's application and set aside the respondent's statutory demand which had been served upon the applicant on 28 November 2019.

[2] The parties agree that the respondent ought to pay the applicant's costs of the application to set aside the statutory demand but the applicant seeks its costs on the indemnity basis, on the strength of its invitation to the respondent to withdraw the statutory demand.

[3] The parties cannot agree on an appropriate costs orders for two interlocutory applications (one brought by each of them and heard by Daubney J on the same day).

[4] The relevant chronology follows:

April 2019	The applicant, its directors and the respondent entered into a commercial building contract for the respondent to fit out the applicant's night club.
July 2019	The applicant fell behind in its progress payments.
1 October 2019	The respondent served upon the applicant a statutory demand for $450,000.
20 November 2019	The Chief Justice set aside that statutory demand.
28 November 2019	The respondent served a second statutory demand upon the applicant addressing deficiencies in the first statutory demand. (This was the statutory demand which was the subject of the application which I determined.)
12 December 2019	The applicant's solicitors wrote to the respondent's solicitors – • acknowledging receipt of the statutory demand; • informing the respondent's solicitors that they anticipated instructions to bring an application to have it set aside; and • inviting the respondent to withdraw the demand, on the strength of the arguments set out in their letter including that it was defective.

16 December 2019	The respondent's solicitors replied to the invitation to withdraw the statutory demand by – • setting out their position as to the viability of the statutory demand; • inviting the applicant to provide the respondent with certain details about the respondent's allegedly defective work and its rectification; • seeking particulars of how the applicant said the statutory demand was defective; and • **informing the applicant that it would consider its position with respect to the applicant's request to withdraw the statutory demand upon receipt of further correspondence from the applicant**.
18 December 2019	The applicant's application to have the statutory demand set aside was filed, with a return date of **30 March 2020**.
20 December 2019	The respondent's solicitors wrote to the applicant's solicitors, suggesting that the return date of 30 March 2020 was "completely unreasonable" and arose "through an abuse of process" – namely, "representations to the Registry to prolong an appearance". In furtherance of the respondent's position, the respondent served upon the applicant an interlocutory application, returnable 23 January 2020 (and an affidavit in support of it) which sought to have the originating application heard on that date.
15 January 2020	The applicant's solicitors wrote to the respondent's solicitors – • apologising for the delay in their response; • contending that the return date of 30 Match 2020 was not unreasonable; • explaining the reasons for the selection of that return date; • enclosing an interlocutory application (proposing a timetable for the filing of material in support of, and in response to, the application); • apologising for not filing and serving the interlocutory application at the same time as the originating application; • proposing that their interlocutory application be returnable on 23 January 2020 also; • foreshadowing potential consent orders; • inviting the respondent to (in effect) acknowledge that its interlocutory application ought to be dismissed,

	with costs reserved; • expanding on the reasons for selecting 30 March 2020 as the return date; and • proposing that the application be heard in the civil list **not before 5 March 2020.**
15 January 2020	The respondent's solicitors replied to the applicant's solicitors – • arguing that there was no utility in the applicant seeking directions for the filing of affidavit material because evidence relevant to the substantive issues had already been filed; • suggesting that the hearing would not take more than two hours (and could be disposed of in applications); • indicating a desire to persist with its application to have the originating application dealt with in applications on 23 January 2019; and • inviting the applicant's solicitor to contact them should the applicant's solicitors wish to discuss the matter.
16 January 2020	The applicant's solicitor served upon the respondent's solicitor the interlocutory application referred to above which sought, among other things, the hearing of the originating application on the civil list not before 5 March 2020.
20 January 2020	The applicant's solicitor wrote to the respondent's solicitor, offering to resolve the originating application and the interlocutory applications on a "commercial basis" by consent orders setting aside the statutory demand and making no order as to costs; together with the respondent undertaking not to issue further statutory demands (other than a demand based on a judgment debt).
23 January 2020	By consent, Daubney J ordered that – • the hearing of the originating application be listed for hearing in the civil list on **5 February 2020**; • the applicant file its further material by 29 January 2020; and • the respondent file its material in reply by 3 February 2020.

[5] The applicant did not persist with its submission that there was a defect in the statutory demand.

[6] As a consequence of the respondent's interlocutory application, the date for the hearing of the originating application was brought forward a month from the applicant's proposed date of 5 March 2020, although the matter was transferred to the civil list.

[7] Thus, whilst the respondent's interlocutory application did not achieve the hearing of the originating application on 23 January 2020, it caused the hearing to be brought forward.

[8] The hearing on 5 February 2020 took about two hours. No witnesses were cross-examined. It is difficult to understand how it was thought that the hearing of the originating application required a day or even the best part of a day.

[9] There was repetition in the documentary material relied upon by the applicant (as the respondent identified). Also, the additional evidence filed by the applicant, and responded to by the respondent, in accordance with the orders made by Daubney J, was of limited utility.

[10] With respect to the interlocutory applications heard by Daubney J, having regard to the outcome reflected in the consent order and the matters referred to above, I consider it appropriate to order that the applicant pay the respondent's costs of both interlocutory applications.

[11] With respect to the originating application, the respondent is to pay the applicant's costs of that application.

[12] I do not consider it appropriate for costs to be assessed on an indemnity basis (in either case). There was nothing exceptional in the conduct of either party, or any other good reason, to warrant such an order.