

SUPREME COURT OF QUEENSLAND

[2002] QSC 064
File No 6256 of 1999

BETWEEN:

STEPHEN HISCOX

Plaintiff

AND:

MADELLINE FRANCIS WOODS

First Defendant

AND:

**GIO GENERAL LIMITED
(ACN 002 861 583)**

Second Defendant

MOYNIHAN J – ORDER FOR COSTS

DELIVERED ON: 25 March 2002

HEARING DATE/S: 19-21 September 2001

ORDER: **Defendant pay plaintiff's costs on an indemnity basis**

CATCHWORDS: COSTS - where plaintiff seeks costs on an indemnity basis – UCPR section 360 – where plaintiff made an offer of settlement judgement for plaintiff not less favourable than that offer – whether defendant shows another costs order is more appropriate – whether defendant should pay plaintiff's costs on an indemnity basis.

John Goss Projects Pty Ltd v Theiss Watkins White Constructions Ltd (in liquidation) 1995 (2)QdR 591

Duncan & Weller v Mendelson 1989 VR 396

COUNSEL: C Newton for the plaintiff.

R Morton for the first and second defendants.

SOLICITORS: Carter Capner Lawyers for the plaintiff.

McInnes Wilson Lawyers for the defendants.

[1] On 16 November 2001 the plaintiff obtained judgement in an amount of \$522,706.92. Directions were given for the exchange of submissions on the question of costs. The plaintiff seeks costs on an indemnity basis. The defendant counters for their assessment on a standard basis.

- [9] In seeking to demonstrate that another order for costs is appropriate in the circumstances the defendant points to the following considerations:
- On 13 June 2000 (three days before the delivery of the offer to settle) the plaintiff has been ordered to serve a statement of loss of damage within seven days but did not comply with the order.
 - The statement of claim filed on November 1999 did not conform with the requirements of UCPR150 (1)(b) and 155. It did not state the nature and the amount of damages claimed or the type and the nature of damage claimed for each type or the basis which amount claimed had been worked out or estimated. Nor was there any detail given of any special damages.
 - The offer to settle was expressed to be clear of all statutory refunds, the amount of the workcover refund was known but it had no way of knowing what other statutory refunds might be payable and what the amounts of them might be without the delivery of the statement of loss and damage.
 - The statement of loss and damage served on 17 July 2001 did not supply details of economic loss stating that particulars would be received on receipt of an account's report.
 - The statement of loss and damage included claims found at trial to have an "unrealistic air of precision", were not sustained by the evidence or were unsustainable.
 - Video surveillance evidence "raised significant doubts as to the voracity of the plaintiff's complaints".
 - It was submitted that given these considerations it was "not unreasonable to suspect that the significant head of damage, economic loss was also significantly overstated."
- [10] There is no basis for concluding that the defendant's solicitors could not have readily ascertained what refunds would have to be made and the relevant amount. Indeed it would be surprising if these issues had not been covered at the settlement conference held before the issue of the writ.
- [11] No point was taken about the defects in the statement of claim prior to the defendant's submissions on costs
- [12] It may be true that the plaintiff was in breach of Byrne J's order. There had been a settlement conference.
- [13] On 23 March 2000 the plaintiff's solicitors delivered a list of documents containing medical reports, income tax returns, workcover documents and salary information. On 15 June 2000 the plaintiff delivered a draft statement of loss and damage and a settlement conference was held at which the defendant made an informal offer which was rejected.
- [14] There is no evidence that the defendants took the point that they could not make a judgment on the offer with the information they had when it was made.

- [15] Put shortly, an offer for settlement was made. The defendant exercised a professional judgment on the basis of the information to hand and take to chance bettering it and failed.
- [16] In my view the defendant has not shown that another order for costs is appropriate and should pay the plaintiff's costs assessed on an indemnity basis.