SUPREME COURT OF QUEENSLAND

CITATION:	***Hardman v. Hobman*** **[2002] QSC** 113
PARTIES:	**DAVID JOHN HARDMAN** (Plaintiff) v **LEVINA RHODA HOBMAN** (Defendant)
FILE NO:	Mackay 93 of 2001
DIVISION:	Trial Division
DELIVERED ON:	19 April 2002
DELIVERED AT:	Rockhampton
HEARING DATES:	16, 17 October, 17 and 18 December 2001
JUDGE:	Dutney J
ORDERS:	**That the plaintiff pay the defendant's costs of the action including reserved costs, if any, to be taxed on the standard basis.**
CATCHWORDS:	COSTS – Plaintiff not recovering a judgement more favourable than defendant's offers – what costs order appropriate.
COUNSEL:	Mr A C Wrenn for the Plaintiff Ms M. Pagani for the Defendant

SOLICITORS: Plaintiff self represented
Jenny Hamilton & Associates for the Defendant

[1] **Dutney J:** I gave judgement in this action on 25 March 2002. In doing so I reserved the question of costs to allow the parties to make submissions. Submissions were received from the defendant within the time specified in my earlier order.

[2] At the time of giving judgement I made reference to s117 of the *Family Law Act* 1975 (Cth), and the criteria for awarding costs in that jurisdiction.

[3] The defendant submits, correctly, that there is no direct analogy between the Family Court's jurisdiction to award costs and the principles applicable in this Court. Nonetheless, I consider that those principles should be given weight in a de facto property case such as this. Particularly, both Courts look at the attempts made to settle the action by either party as relevant to this issue.

[4] In this case I am now informed that there was a multitude of offers made by the defendant at various times.

[5] This action was commenced by writ on 8 July, 1994. The first formal offer under the then rules was made on 4 November 1994. In it the defendant offered to settle the action by paying the plaintiff $20,000 plus any amount required to be repaid to the plaintiff's parents relating to the $16,000 borrowed to buy the Cannonvale house. In addition he was to retain the "Kismet", "Mutchilba", the proceeds of sale of the tractor and the Toyota utility. Each party was to pay their own costs.

[6] This early offer would clearly have given the plaintiff more than I ultimately considered he was entitled to.

[7] In September 1995 the offer was increased to include all the property the plaintiff had previously appropriated from the relationship plus half the net proceeds of sale of the Cannonvale property.

[8] A formal offer to settle for $35,000 was made in January 1999. He would have retained all the other benefits he had been offered.

[9] In July 1999 this was increased further to include the plaintiff's costs. The cash payment was again increased in May 2000 to $50,000 while still including the offer to pay the plaintiff's costs. This last offer was renewed as late as August 2001.

[10] I am satisfied that from the commencement of this action the defendant has done everything reasonable to effect a fair settlement of the claim on terms better than the plaintiff ultimately received. In view of the persistent rejection of what, in consequence of my judgement, I regard as fair offers I consider it would be unfair for the defendant to be burdened with costs. Under rule 361 of the UCPR the defendant would be entitled to her costs on the standard basis from the date of the first offer but would be liable to pay plaintiff's costs up until that date. In this case I do not consider that the plaintiff should be entitled to any costs. Even before the action commenced (on 9 May, 1994) the defendant had offered to repay the $16,000 borrowed from the plaintiff's parents and divide the net proceeds of the Cannonvale property (about $50,000) between them.

[11] In all the circumstances I order that the plaintiff pay the defendant's costs of the action (including reserved costs, if any) to be assessed on the standard basis.