

## Transcript of Proceedings

Copyright in this transcript is vested in the Crown. Copies thereof must not be made or sold without the written authority of the Director, State Reporting Bureau.

[2002] QSC 240

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WILSON J

No S892 of 2001

MSW PROPERTY PTY LTD (ACN 063 814 479) Plaintiff

and

LAW MORTGAGES QUEENSLAND PTY LTD Defendant  
(ACN 010 858 107)

BRISBANE

..DATE 12/08/2002

JUDGMENT

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HER HONOUR: When I delivered judgment in this matter on 7 August 2002, I said in paragraph 30 of my reasons that I considered the plaintiff was entitled to declarations in terms of paragraphs A and B of the claim filed on 25 January 2001 and to costs. Counsel intimated that there may be argument about costs having regard to an offer that had been made under chapter 9 part 5 of the UCPR. That argument has taken place before me this morning.

The claim was filed on 25 January 2001. The proceeding progressed through interlocutory stages. There was a mediation in December 2001 at which issues were not resolved. That was followed almost immediately by the plaintiffs making an offer pursuant to chapter 9 part 5. The matter then went to trial before me on 8 and 9 April 2002.

This morning Mr Bland of counsel for the defendant conceded that the requirements of rule 360 of the UCPR have been satisfied, in that the plaintiff made an offer not accepted by the defendant and the plaintiff obtained a judgment no less favourable than the offer to settle; further, the plaintiff was at all material times willing and able to carry out what was proposed in the offer. The offer would have resulted in the plaintiff accepting a "discount" of \$80,000.

Rule 360(1) provides that in those circumstances the Court must order the defendant to pay the plaintiff's costs calculated on the indemnity basis unless the defendant shows another order for costs is appropriate in the circumstances.

Mr Bland submitted that another order, by which I assumed he meant costs on the standard basis, is appropriate in the present circumstances. In his submission rule 360 is premised upon the requirement that the parties act reasonably in the litigation. He submitted that his client had acted reasonably because the case that had been presented at the trial was clearly one that was arguable. His alternative submission was that if indemnity costs were to be ordered, they should run, not from the inception of the proceedings, but from the making of the offer.

1

10

20

In my view rule 360 is an example of the philosophy set out in rule 5 of the UCPR that proceedings should be resolved justly and expeditiously and with a minimum of expense. The rule is clearly designed to encourage compromise and those responsible for drawing the rule have made a clear policy choice that in the case of an offer by a plaintiff, if the preconditions are made out, indemnity costs should follow, and they should run from the inception of the proceedings. This is in contrast with the position of a defendant who makes a successful offer. In that case the costs are on the standard basis and there is a cut off point of the making of the offer.

30

40

In my view the mere fact that the case was arguable is not sufficient to persuade me that some other order is appropriate in the circumstances. Accordingly, I have concluded that the plaintiff should receive an order for indemnity costs of and incidental to the proceeding, including reserved costs, and that those indemnity costs should run from the inception of

50

the proceeding.

1

Now, I have before me a draft order which makes allowance for that. I shall initial the draft and have it placed with the papers. I should really date it today, I think, Gentlemen, rather than 7 August.

10

-----

20

30

40

50