

SUPREME COURT OF QUEENSLAND

CITATION: *Alderson v Schmidt* [2002] QCA 331

PARTIES: **ADRIAN KEITH ALDERSON**
(plaintiff/respondent)
v
MAXWELL GEORGE SCHMIDT
(defendant/appellant)

FILE NO/S: Appeal No 7264 of 1997
SC No 96 of 1992

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: Judgment delivered 26 February 1999
Further Order delivered 19 March 1999
Further Order delivered 3 September 2002

DELIVERED AT: Brisbane

HEARING DATE: 11 September 1998

JUDGES: McMurdo P and Ambrose J
Judgment of the Court

ORDERS: **1. The order of 19 March 1999 is amended to include the following paragraph:**
“4. the respondent pay the appellant’s taxed costs of and incidental to the appeal”.

2. Paragraph [7] of the reasons for judgment in this matter, delivered on 19 March 1999, should also be amended consistent with these reasons.

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – AMENDING VARYING AND SETTING ASIDE – OTHER MATTERS – where costs order made – where costs order omitted to include usual, uncontested order that the unsuccessful respondent pay the successful appellant’s taxed costs of and incidental to the appeal – where one member of the court now retired – where parties consented to the two remaining members constituting the court – where order amended

Supreme Court of Queensland Act 1991 (Qld), s 31(1)
Uniform Civil Procedure Rules 1999 (Qld), s 388

COUNSEL: SC Williams QC, with M T O'Sullivan, for the appellant
JJ Clifford QC, with DG Turnbull, for the respondent

SOLICITORS: Conrad Lohe, Crown Solicitor for the appellant
O'Shea & Dyer for the respondent

- [1] **THE COURT:** On 26 February 1999 this court published its reasons for judgment and by majority ordered that the appeal be allowed and that the order below be varied by substituting as the judgment sum the amount of \$465,490.08 for the amount of \$558,990.08. The parties were to file and serve any written submissions as to costs within seven days. On 19 March 1999 the Court of Appeal made a further order that the appellant pay the respondent's costs of the action to be taxed to 12 July 1996; the respondent pay the appellant's taxed costs of the action thereafter (but not any costs in relation to the second day of the hearing); and the appellant pay the respondent the costs thrown away by adjournment of 29 April 1997. Through oversight, the court omitted to also include the usual order, which was uncontentious in this case, that the unsuccessful respondent pay the successful appellant's taxed costs of and incidental to the appeal.
- [2] Unfortunately this oversight was not brought to the attention of the court until 14 June 2002. By then, one of the members of the court, Thomas JA, had retired. Only recently have all parties consented to the two remaining members constituting the court under s 31(1) *Supreme Court of Queensland Act 1991* (Qld) and amending the order under *UCPR r 388*. That course is plainly appropriate. We commend the commonsense approach of the parties which has saved further unnecessary expense.
- [3] We would make the following order. The order of 19 March 1999 is amended to include the following paragraph:
- “4. The respondent pay the appellant's taxed costs of and incidental to the appeal”.
- [4] Paragraph [7] of the reasons for judgment in this matter, delivered on 19 March 1999, should also be amended consistent with these reasons.