

# SUPREME COURT OF QUEENSLAND

CITATION: *Schultz v William Allen & Ors* [2003] QSC 059

PARTIES: **MARGARET ROSE SCHULTZ**  
(Plaintiff)  
v  
**WILLIAM STEPHEN ALLEN, ALFRED KENNAUGH, ZUILL WREN (now PRENTIS), OWEN PRENTIS, GORDON KENNETH MALCOLM, JOHN HARDY, BERNARD KIOTKA, ROBERT BOLAND, DENNIS MUNT Sued on behalf of themselves and on behalf of all the other members of the unincorporated association known as the RETURNED SERVICE LEAGUE OF AUSTRALIA (QUEENSLAND BRANCH) ATHERTON SUB-BRANCH**  
(Defendants)

FILE NO/S: 84 of 1996

DIVISION: Trial

PROCEEDING: Application for Costs

ORIGINATING COURT: Supreme Court, Cairns

DELIVERED ON: 27 February 2003

DELIVERED AT: Cairns

JUDGE: Jones J

ORDER: **That the defendants pay the plaintiff's costs calculated on the indemnity basis.**

CATCHWORDS

NEGLIGENCE – DANGEROUS PREMISES – where voluntary worker slipped on damp floor – whether breach of duty of care – whether volens and contributory negligence

PROCEDURE – COSTS – where order sought under *UCPR* r 360 that the defendant pay the plaintiff's costs calculated on the indemnity basis – whether, where two offers to settle allegedly made – one being larger than the judgment sum, the plaintiff could validly rely on r 360.

*Australian Safeway Stores v Laluzna* (1987) 162 CLR 479 considered

- [1] The plaintiff seeks an order pursuant to the *Uniform Civil Procedure Rules* r360 that the defendant pay the plaintiff's costs calculated on an indemnity basis. R 360 provides as follows:-

“(1) If -

- (a) the plaintiff makes an offer to settle that is not accepted by the defendant and the plaintiff obtains a judgment no less favourable than the offer to settle; and
- (b) the court is satisfied that the plaintiff was at all material times willing and able to carry out what was proposed in the offer

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.

(2) If the plaintiff makes more than one offer satisfying sub rule (1), the first of those offers is taken to be the only offer for this rule.”

- [2] The plaintiff's submission rests on an offer to settle dated 11 February 2002. That was an offer in the sum of \$850,000, which the defendant did not accept. Judgment was given for the plaintiff in the sum of \$1,087,856.85. This judgment was obviously “no less favourable” to the plaintiff than her offer to settle, the judgment being in an amount which is equal to or greater than the amount in the offer to settle. It is not contended that the plaintiff was not at all material times willing to carry out what was proposed in the offer, nor was it suggested that there were material changes in the particulars relied upon between date of offer and the trial..
- [3] Thus the plaintiff does satisfy all the conditions required in order to bring herself within *UCPR* r 360(1) and so 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.
- [4] The defendant's submission alleges that another offer was made on 5 October 2000 in the sum of \$1,500,000. The plaintiff's submission on costs makes no mention of such an offer and I note that the copy of that alleged offer appended to the defendant's submission is unsigned. The defendants' solicitor attempts to invoke r 360(2) to argue, in effect, that under r 360(2) this offer of \$1,500,000 was the first and only offer and hence that “the judgment ultimately obtained by the plaintiff is not more favourable than the offer to settle by the plaintiff...”
- [5] To so argue is to misconstrue the rule 360. There was only one offer **satisfying sub-rule 1** viz the offer of 11 February 2002. Consequently sub-rule (2) has no application in these circumstances..
- [6] The position with respect to the plaintiff's costs remains the same whether or not any offer to settle in the amount of \$1,500,000 was ever made.
- [7] Thus I must order that the defendants pay the plaintiff's costs calculated on the indemnity basis.