

# SUPREME COURT OF QUEENSLAND

File No 1791 of 2002

CITATION: *Sauer v CSR Limited* [2003] QSC 084

PARTIES: **RAYMOND THOMAS MARK SAUER**  
(plaintiff)  
v  
**CSR LIMITED**  
(defendant)

FILE NO/S: SC 1791 of 2002

DIVISION: Trial Division

PROCEEDING: Claim

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 4 April 2002

DELIVERED AT: Brisbane

HEARING DATE: Application on the papers

JUDGE: Moynihan J

ORDER **That the defendant pay the plaintiff's costs in the action including any reserved costs calculated on an indemnity basis**

COUNSEL: R Oliver for the plaintiff  
GW Diehm for the defendant

SOLICITORS: Walker Pender for the plaintiff  
Ebsworth & Ebsworth for the defendant

- [1] On 6 March 2003 after a trial in which quantum was the only issue I gave judgment to the plaintiff for \$166,489.43.
- [2] The plaintiff now seeks an order pursuant to *Uniform Civil Procedure Rules* r 360(1)(b) ("*UCPR*") that the defendant pay his costs assessed on the indemnity basis. The defendant contends that "another order for costs is appropriate in the circumstances" and submits that the appropriate order is that the defendant pay the plaintiff's costs assessed on a standard basis on the District Court scale applicable to the amount recovered.
- [3] The plaintiff made an offer to settle for \$150,000 clear on 31 July 2000, some two years before the trial. It is accepted by the defendant that he was at all material times willing and able to carry out what was proposed in the offer.
- [4] The incident giving rise to the action occurred on 17 December 1995 and these proceedings were instituted in the District Court on 2 December 1998. The action

was transferred to this court on 13 December 2001. It is not clear why the action took so long to come to trial.

- [5] A major issue at the trial was as to whether the plaintiff's disability was a consequence of the incident of 17 December 1995 or of events unrelated to that incident. A second major issue was as to the plaintiff's future economic loss.
- [6] In submitting that an order for costs other than that provided for by *UCPR* r 360(1)(b) the defendant relies on *Castro v Hillary* (2002) QCA 359. *Castro* turned on a consideration of whether the recipient of the offer to settle in that case had an informed opportunity to assess the chances of either side doing better than the other based on the disclosed material.
- [7] In my view this is not such a case. The outcome of this case turned ultimately on the view the court took of the relationship between the incident of 17 December 1995 and the plaintiff's disability together with the effect of any disability due to the incident on his earning capacity.
- [8] The trial is notable for the fact that there was an adjournment as a consequence of the defendant's late introduction of evidence as to the plaintiff's squash playing activities which, in my view as I said at the trial, had been squarely on the table before the trial commenced.
- [9] It is no doubt true that had a different view of the facts of the case prevailed there would have been a different outcome in terms of the damages award. That is inherent in any settlement offer. But neither that nor the fact that the plaintiff "only beat his formal offer by \$16,489.43" constitute the basis for another order in terms of *UCPR* r 360. Once again such a situation is inherent in the course of events spread over six years from the accident and two years from offer to trial. The plaintiff did not in my view deprive the defendant of an informed opportunity to access the offer or for that matter make an offer
- [10] It is also true that there was a change in the defendant's employment circumstances between the making of the offer and the trial that without more is not really sufficient to bring the case within the principle stated in *Castro*.
- [11] The defendant acknowledges that the statement of loss and damage as at 31 July 2000 claims a sum greater than that ultimately awarded and submits that "there was no proper substantiation for such a claim" as opposed to the different circumstances found in the judgment. That issue is not sufficient.
- [12] The appropriate order is that the defendant pay the plaintiff's costs in the action, including any reserved costs calculated on an indemnity basis.