

SUPREME COURT OF QUEENSLAND

CITATION: *Molony & Anor v ACN 009 697 367 P/L (In Liq)* [2003] QCA 177

PARTIES: **RAY MOLONY**
(first plaintiff/first appellant)
INTERNATIONAL JOCKEY SCHOOL PTY LTD
ACN 085 035 383
(second plaintiff/second appellant)
v
ACN 009 697 367 PTY LTD (FORMERLY FRED MARSH PTY LTD (IN LIQUIDATION))
(defendant/respondent)

FILE NO/S: Appeal No 6356 of 2002
SC No 85 of 2001

DIVISION: Court of Appeal

PROCEEDING: Appeal from Interlocutory Decision - Further Order

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: Judgment delivered 21 March 2003
Further Order delivered 2 May 2003

DELIVERED AT: Brisbane

HEARING DATE: 10 March 2003

JUDGES: McMurdo P, Williams JA and White J
Separate reasons for judgment of each member of the Court, each concurring as to the further order made

FURTHER ORDER: **The respondent pay the appellants' costs of the appeal limited to the filing of the notice of appeal**

COUNSEL: The first appellant appeared on his own behalf and by leave on behalf of the second appellant
M M Stewart SC for the respondent

SOLICITORS: The first appellant appeared on his own behalf and by leave on behalf of the second appellant
Ebsworth & Ebsworth for the respondent

[1] **McMURDO P:** When reasons and orders were published in this matter on 21 March 2003, at the request of the respondent the costs order was vacated to allow the parties to make further submissions as to costs.

[2] Both parties have made those submissions and the respondent has filed affidavit material.

- [3] The appellant, Mr Molony, who is not a lawyer, has at all relevant times represented himself and, by leave, the appellant company, although he is now represented by the solicitors who have prepared the written submissions on this further order.
- [4] The respondent emphasises that on 29 November 2002 it made an offer to the appellants to consent to orders similar to those made in paras 1 and 2 of this Court's order of 21 March 2003 and to an order that there be no costs in relation to the appeal. The notice of appeal was filed, with the appropriate filing fee, on 24 October 2002, some weeks before the respondent made this offer or any concession as to Mr Molony's appeal; the respondent's offer did not cover Mr Molony's costs to that point and was open until 4 December 2002.
- [5] On 4 February 2003, at 6.23 pm Mr Molony faxed for consideration to the respondent's solicitors the following consent orders:
- "1. The appeal, insofar as it relates to the staying of the claim of Ray Molony in the proceeding, be allowed
 2. That Ray Molony be granted leave to file an amended claim and statement of claim within 21 days of the date of this order
 3. That the appeal of the corporate appellant be adjourned sine die pending the determination of the claim of Ray Molony
 4. That all costs orders and costs to date be costs in the cause."
- [6] Paragraph 3 of that proposed consent order would almost certainly not have been acceptable to the Court but in any case the respondent rejected the proposed orders on 6 February 2003.
- [7] The respondent contends that the appellants should be ordered to pay the respondent's costs of the appeal, with Mr Molony's liability limited to the costs of the hearing of the appeal on 10 March 2003. The appellants contend Mr Molony is entitled to his costs of and incidental to the appeal.
- [8] The sensible course would have been for the parties to agree to the respondent's proposed orders and an additional order that the respondent pay the appellant Molony's costs of the appeal to that point. But that was not the respondent's offer to the appellant. In these circumstances the costs order vacated on 21 March 2003 was appropriate.
- Order:*
- The respondent pay the appellants' costs of the appeal limited to the filing of the notice of appeal.*
- [9] **WILLIAMS JA:** I agree, for the reasons given by the President, that the respondent should pay the appellants' costs of the appeal limited to the filing of the notice of appeal.
- [10] **WHITE J:** I have read the reasons given by the President as to the disposition of the costs of the appeal and agree that the respondent should pay the appellants' costs but limited to the filing of the notice of appeal.