

SUPREME COURT OF QUEENSLAND

CITATION: *Commissioner of Taxation v Cocaj & Anor; Commissioner of Taxation v Behluli* [2004] QCA 122

PARTIES: **THE COMMISSIONER OF TAXATION**
(plaintiff/respondent)
v
AHMET COCAJ and SELATIN COCAJ
(defendants/appellants)

THE COMMISSIONER OF TAXATION
(plaintiff/respondent)
v
ARBEN BEHLULI
(defendant/appellant)

FILE NO/S: Appeal No 11016 of 2003
Appeal No 11017 of 2003
DC No 41 of 2000
DC No 42 of 2000

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeals – Further Order

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 23 April 2004

DELIVERED AT: Brisbane

HEARING DATE: 4 March 2004

JUDGES: McMurdo P, Williams JA and White J
Judgment of the Court

FURTHER ORDER: **Original order is to be amended in each case by adding the words “with costs to be assessed”**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where appeals dismissed – whether costs should follow the event

COUNSEL: P R Smith for the appellants in each appeal
M J Hogan for the respondent in each appeal

SOLICITORS: Forbes & Dowling for the appellants in each appeal
Australian Government Solicitor for the respondent in each appeal

- [1] **THE COURT:** Substantive reasons for judgment in these matters were delivered on 18 March 2004, and it was then ordered that each appeal be dismissed. No reference was made in the published reasons to costs of the appeal. The successful respondent in each matter, The Commissioner of Taxation, has now asked that the formal order of the Court be amended to include an order for costs.
- [2] As noted in the substantive reasons for judgment, at the material time the *Excise Act* 1901 (Cth) provided that “Excise Prosecutions” were to be litigated in a court adopting the practice and procedure “of the Court in civil cases”; that is made clear by s 136 and s 137 of the Act as it then stood.
- [3] In each matter proceedings were commenced in the District Court by Claim and Statement of Claim. In all of those documents an order for costs was sought. In each case the order of the District Court judge in favour of The Commissioner of Taxation included an order for payment of costs to be assessed.
- [4] The Notice of Appeal in each case sought an order for costs in favour of the appellant if the appeal should be successful.
- [5] As already noted the appeals were unsuccessful, and it was through an oversight that each formal order did not include an order for costs.
- [6] Each side has now forwarded to the court written submissions on the issue of costs. The successful respondent contends that the ordinary rule, costs should follow the event, should apply. It is contended that there are no exceptional circumstances which require a departure from that usual rule.
- [7] In answer the unsuccessful appellants contend that it is too late for an order for costs to be made and alternatively that the court should not exercise its discretion to award costs in favour of the successful respondent. The appellants also contend that significant fines were imposed which constituted a substantial penalty and in consequence no additional order for costs should be made. It is also submitted that the issue raised on the appeal had not been determined previously, and was a matter of public interest.
- [8] The fact that the successful respondent’s outline of argument did not refer to costs contributed to the court’s oversight in not including an order for costs in the initial order.
- [9] The matters raised by the unsuccessful appellants do not convince the court that there is a proper basis for departing from the usual rule. The original order should be amended in each case by adding the words “with costs to be assessed”.
- [10] Order accordingly.