

# SUPREME COURT OF QUEENSLAND

CITATION: *Jattke v Williams* [2004] QSC 472

PARTIES: **UDO JATTKE AND JENNIFER ELIZABETH JATTKE**  
(Plaintiffs)  
v  
**CARL STUART WILLIAMS**  
(First Defendant)  
**ERINA MARIA WILLIAMS**  
(Second Defendant)  
**CUEDOS PTY LTD**  
**ACN 079 504 868**  
(Third Defendant)

FILE NO/S: 46 of 2002

DIVISION: Trial

PROCEEDING: Application for costs

ORIGINATING COURT: Supreme Court, Cairns

DELIVERED ON: 23 December 2004

DELIVERED AT: Cairns

HEARING DATE: 13 August 2004

JUDGE: Jones J

ORDER: **That the plaintiffs pay the costs of and incidental to the action to be assessed on a standard basis.**

COUNSEL:

SOLICITORS: Mr Taft of Farrellys Lawyers for the plaintiffs  
Mr Jonsson of MacDonnells Solicitors for the first, second and third defendants

- [1] Judgment was delivered in this matter on 28 May 2004 and written submissions were sought on the issue of costs. These were provided and supplemented by further oral submissions on 13 August 2004.
- [2] The defendants who were successful in the action seek costs to be assessed on the standard basis. Prima facie, they are entitled to such an order.
- [3] The unsuccessful plaintiffs argue that the institution of the proceedings was occasioned to some extent by the conduct of the defendants and that as a consequence the costs of the action should be at the cost of partnership/joint venture.

- [4] The conduct relied upon as referred to in the judgment was the failure of both sides to agree upon the corporate structure by which the joint venture was to be carried on (para 20) and the failure of the defendants to provide periodic financial reports (para 23). Also, the plaintiff complains of a failure by the defendants to plead the fact of matching contributions to capital costs, contending that the course of the proceedings may have been different if this had been done.
- [5] I reject each of these arguments. The plaintiffs were in the same position as the defendants in terms of their knowledge of discussions about the corporate structure. Having found that it was the plaintiffs' failure to return documents that caused this task not to be completed, there is no basis for any costs concession on that ground. In relation to the provision of financial information I am satisfied that there was no breach by the defendants of any fiduciary obligation to provide such information. There had been difficulty with the partnership accountants but more significantly there was no inquiry by the plaintiffs for any such information.
- [6] At the time of the commencement of this action and during its course there was no indication that this information would have averted the need for a trial. Many issues were litigated. The outcome essentially turned on findings of credibility which were favourable to the defendants. The conclusion that I come to is that the costs should follow the event.
- [7] I therefore order that the plaintiffs pay the costs of and incidental to the action to be assessed on a standard basis.