

SUPREME COURT OF QUEENSLAND

CITATION: *Amos v Monsour Legal Costs P/L* [2007] QCA 235

PARTIES: **EDWARD AMOS**
(plaintiff/applicant/appellant)
v
MONSOUR LEGAL COSTS PTY LTD
(ACN 010 644 989)
(defendant/respondent)

FILE NO/S: Appeal No 9984 of 2006
DC No 2347 of 2005

DIVISION: Court of Appeal

PROCEEDING: Application for Leave s 118 DCA (Civil)

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 24 July 2007

DELIVERED AT: Brisbane

HEARING DATE: 4 April 2007

JUDGES: McMurdo P, Wilson J and Lyons J
Judgment of the Court

ORDER: **1. The application for leave to appeal is granted but limited to the applicant's first two contentions set out in paragraph [6] of these reasons**
2. The appeal is dismissed with costs to be assessed

CATCHWORDS: COSTS – JURISDICTION – GENERAL – where costs were assessed by the Magistrates Court under *Uniform Civil Procedure Rules 1999* (Qld) Ch 17 (Pt 2) – whether the Magistrate had the power to undertake an assessment of costs under *Uniform Civil Procedure Rules 1999* (Qld) r 681(2) – whether there was any other statutory authority giving Magistrates Courts power to award costs

COSTS – DEPARTING FROM THE GENERAL RULE – ORDER FOR COSTS ON AN INDEMNITY BASIS – where costs were assessed on an indemnity basis – whether the concept of reasonableness under *Uniform Civil Procedure Rules 1999* (Qld) r 704(3) involved a consideration of proportionality

District Court of Queensland Act 1967 (Qld), s 69(1)
Magistrates Courts Act 1921 (Qld), s 5A(4), s 14(f), s 30(2)(b)
Statutory Instruments Act 1992 (Qld), s 8, s 9

Supreme Court Act 1995 (Qld), s 221
Supreme Court of Queensland Act 1991 (Qld), s 118
Uniform Civil Procedure Rules 1999 (Qld), Ch 17 (Pt 2),
 r 681, r 690, r 704

Bottoms v Reser [2000] QSC 413, SC No 28 of 1998,
 29 November 2000, considered
Henley & Anor v State of Queensland & Anor [2005] QDC
 94, DC No 3997 of 2000, 29 April 2005, applied
Knight v F.P. Special Assets Ltd (1992) 174 CLR 178,
 applied
Lownds v Home Office [2002] 1 WLR 2451, considered
McKeand v Thomas [2006] NSWSC 1356, considered
Moore v Moore [2004] NSWSC 587, considered
Skalkos v T & S Recoveries Pty Ltd (2005) 65 NSWLR 151,
 considered
Yvancich v Kennedy (No 2) [2004] NSWCA 397, considered

COUNSEL: A M Daubney SC, with M D Ambrose, for the
 applicant/appellant
 M F Wilson for the respondent

SOLICITORS: Keller Nall & Brown for the applicant/appellant
 McInnes Wilson for the respondent

- [1] **THE COURT:** The seed for this application for leave to appeal was sown some years ago when the applicant, Mr Amos, a frequent litigator in these courts, commenced an action against the National Australia Bank Limited. On 17 July 2000 the parties settled the action on terms which required Mr Amos to pay the bank's costs as assessed by the present respondent, Monsour Legal Costs Pty Ltd ("Monsour P/L"). Mr Amos was dissatisfied with Monsour P/L's assessment of the bank's costs and decided to dispute it in court, despite the term in the settlement agreement preventing him from disputing the assessment. He brought an application to challenge both the settlement agreement and the assessment of costs. His challenge in the Trial Division of this Court was ultimately unsuccessful and he was ordered to pay costs of that action on an indemnity basis: see *Amos v National Australia Bank Limited*.¹
- [2] Undeterred, he then commenced an action against Monsour P/L in contract and or alternatively negligence in the Brisbane Magistrates Court, claiming damages of \$22,898.30. That action was heard on 27 July 2004. On 31 August 2004 the magistrate delivered her reasons for dismissing his claim and ordered that he pay Monsour P/L's "costs of the proceedings on an indemnity basis, such costs to be assessed by the court".²
- [3] Mr Amos appealed to the District Court from the magistrate's orders, including the costs order. His appeal was wholly unsuccessful and was dismissed with costs to be assessed on the standard basis.³

¹ [2001] QSC 31.

² *Amos v Monsour Legal Costs Pty Ltd* M17192 of 2001, 31 August 2004.

³ *Amos v Monsour Legal Costs Pty Ltd* [2005] QDC, BD1204 of 2004, Wylie DCJ, 17 May 2005.

- [4] The assessment of Monsour P/L's costs against Mr Amos arising out of the order of 31 August 2004 proceeded before the magistrate on 27 June 2005. It took up the whole day. The magistrate assessed costs of the action (which was one for damages for less than \$23,000) at \$49,996.00 and ordered that Mr Amos pay them by 11 July 2005.
- [5] Mr Amos appealed from that order to the District Court. The appeal was heard on 6 and 7 April 2006. The appeal was allowed to the extent of reducing the costs award by \$4,490.00 but was otherwise dismissed and Mr Amos was ordered to pay Monsour P/L's costs of the appeal to be assessed on the standard basis.⁴
- [6] Mr Amos now seeks leave to appeal from that order under s 118(3) *District Court of Queensland Act 1967* (Qld). The applicant contends that the application raises three issues which warrant the grant of leave to appeal. The first is the proper construction and application of Ch 17 (Pt 2) *Uniform Civil Procedure Rules 1999* (Qld) ("UCPR") relating to the award of costs, particularly indemnity costs in the Magistrates Court. The second is the proper construction and application of UCPR r 704(3) in that an assessment of "the reasonable amount of costs reasonably incurred" necessarily invokes the notion that to be reasonable, costs should be proportionate to the litigation. The third is that knowledge of the law is a lawyer's stock in trade and it is wrong in principle to allow the costs of a solicitor to educate himself in the pertinent field of law, especially where the solicitor claimed to have "extreme expertise"⁵ in the pertinent area of law.
- [7] If Mr Amos were granted leave to appeal his proposed notice of appeal now contains 15 grounds. Ground one concerns Mr Amos's first contention set out above. Grounds 2 to 14 inclusive concern whether the magistrate erred in exercising her discretion as to various aspects of the assessment of the amount of costs awarded. The second contention set out above is arguably contained in the second proposed ground of appeal: that the judge erred in finding the magistrate's discretion did not miscarry in upholding the assessment of costs for an uncomplicated one day trial in the amount of \$45,506.00. The applicant's third contention set out above is contained in ground 15 of the proposed notice of appeal.

The magistrate's approach

- [8] In the reasons delivered on 31 August 2004⁶ the magistrate found the following. The settlement agreement did not, contrary to Monsour P/L's submissions, give rise to an estoppel precluding a suit in negligence. Mr Amos did not have a contractual relationship with Monsour P/L and no cause of action against it for breach of contract. Although Monsour P/L owed Mr Amos a duty of care, Mr Amos did not provide any evidence to support his allegation of negligence against Monsour P/L.
- [9] The magistrate was impressed by Mr Monsour's evidence on behalf of his company and concluded that his costs assessment reflected his considerable experience as a legal costs assessor and demonstrated the highest ethical standards and professionalism which could be expected by Mr Amos.

⁴ *Amos v Monsour Legal Costs Pty Ltd* [2006] QDC 485, BD2347 of 2005, 2 November 2006.

⁵ Clause 6 of the "Client Agreement" between Monsour P/L and their lawyers described the solicitor as "... an extreme expert in the area of litigious disputes regarding the nature of the work identified in Clause 1 ..."

⁶ *Amos v Monsour Legal Costs Pty Ltd* M17192 of 2001, 31 August 2004.

- [10] The magistrate also concluded that Mr Amos was intent on pursuing all objections to Monsour P/L's assessment of costs notwithstanding the absence of any cogent evidence to support his allegations and the express provisions of the settlement agreement. The magistrate was persuaded that Mr Amos's conduct of the proceedings before her demonstrated a disregard for any proper consideration of the prospects of success of the action, noting:

"Given the paucity of evidence adduced by [Mr Amos], when considered in the context of [Mr Amos's] conduct in prosecuting these proceedings, I am satisfied that the facts and circumstances of this case support a finding that these proceedings were conducted for an ulterior purpose (refer *White Industries re Flower & Hart* unreported Federal Court of Australia, per Goldberg J, 14 July 1998)."

- [11] For those reasons, on 31 August 2004 the magistrate exercised her discretion to depart from the usual practice of awarding costs on a standard basis and instead directed Mr Amos to pay Monsour P/L's costs of the proceedings on an indemnity basis and ordered that such costs be assessed by the court. As earlier noted, Mr Amos's appeal from those orders was dismissed.⁷
- [12] Prior to the magistrate assessing costs in accordance with those orders Mr Amos lodged a 35 page document containing general objections to Monsour P/L's claimed costs. In hearing and determining the assessment of costs on 27 June 2005, the magistrate noted that Mr Amos had made "not one concession throughout the document of 35 pages in relation to any of the items claimed". Her Honour accepted Monsour P/L's submission that a high degree of involvement by its solicitors was warranted in this case because of the manner in which Mr Amos conducted the proceedings. There were some unusual features, for example, an allegation that senior counsel for Monsour P/L had misled the court and there was a dispute over whether service had been effected and both a judgment in default and a statutory demand had to be set aside. The magistrate did not accept the submission made on Mr Amos's behalf that research of the law by Monsour P/L's lawyers was an expense of self-education. The magistrate did not consider the case was a simple one and thought there were a number of novel points of law argued in the proceedings which required quite extensive research, notwithstanding Mr Amos's remote prospects of success. The magistrate did not consider the case was a relatively simple professional negligence case; it was of some complexity. The magistrate individually reviewed the items claimed by Monsour P/L and made adjustments she considered appropriate to the items claimed, reducing the total sum claimed by \$2,255.60.

The approach of the District Court judge

- [13] There were in essence three points taken by Mr Amos on appeal to the District Court. The first related to the setting aside of subpoenas and is not relevant to the present application. The second was essentially the applicant's first contention in this Court and concerned the construction and application of Ch 17 Pt 2 UCPR so far as it relates to indemnity costs in the Magistrates Court. The remaining points raised related directly to the magistrate's exercise of discretion in assessing the costs.

⁷ *Amos v Monsour Legal Costs Pty Ltd* [2005] QDC, BD1204 of 2004, Wylie DCJ, 17 May 2005.

- [14] The judge held that when assessing costs on the indemnity basis under UCPR r 704(3) the taxing officer "must allow all costs reasonably incurred and of a reasonable amount";⁸ "considerable liberality" should ordinarily be extended in assessing reasonableness.⁹ The costs agreement between the party awarded costs and that party's lawyers will determine the actual costs incurred by the party. Under UCPR r 704(3) the reasonableness of the actual costs claimed is ascertained by reference to the costs agreement, the relevant scale of fees prescribed, and the charges ordinarily payable to a solicitor for the work. The starting point in determining whether a claim should be disallowed on the grounds of unreasonableness is normally the costs agreement.¹⁰ It would be an unusual case where costs payable under a costs agreement would be disallowed under the reasonableness test: *Bottoms v Reser*.¹¹
- [15] In practical terms, the test to be applied is that all costs are to be allowed unless unreasonably incurred or in an unreasonable amount. In applying that test, the party benefiting from the award of costs is to be given the benefit of any doubt (*Bottoms v Reser*¹²).¹³ After referring to dicta in *Beardmore v Franklins Management Services Pty Ltd*,¹⁴ the judge rightly observed that the appeal was not from an order for costs to be assessed on the indemnity basis but from the assessment made on the indemnity basis. The judge noted the submission that any costs on the indemnity basis had to be assessed by reference to the appropriate Magistrates Court scale under UCPR r 690(4). His Honour adopted the approach of his Honour Judge McGill in *Henley & Anor v State of Queensland & Anor*¹⁵ which determined that an assessment of indemnity costs in the Magistrates Court should be carried out in accordance with the test in UCPR r 704(3) and that UCPR r 690(4) merely identified the appropriate scale for the purposes of r 704(3)(a). His Honour concluded that the magistrate was right in adopting a like approach.
- [16] The judge rejected the public policy argument advanced that an award of indemnity costs would discourage litigation because costs orders may be substantially greater than the claim giving rise to the costs orders. First, indemnity costs are ordered only in defined circumstances such as those present here where an action had been pursued without any reasonable prospect of success. Second, indemnity costs are to indemnify, as far as reasonably possible, the successful party for the costs of resisting the action. Third, it is equally not in the public interest to encourage plaintiffs to litigate actions without some prospect of success.¹⁶
- [17] His Honour noted Mr Amos's complaint that Monsour P/L's solicitor-advocate was occupied for an unreasonable period of time on trial preparation so that the costs charged for trial preparation were about \$20,000 for a one day trial in the Magistrates Court. Because the costs were awarded on an indemnity basis, the sole exclusionary criterion was whether the costs claimed under the client agreement were unreasonable.¹⁷ In *Bottoms v Reser* the Chief Justice emphasised the liberality

⁸ *Bottoms v Reser* [2000] QSC 413.

⁹ Above.

¹⁰ Per McGill DCJ in *Henley & Anor v State of Queensland & Anor* [2005] QDC 94, para 41.

¹¹ [2000] QSC 413.

¹² Above.

¹³ *Amos v Monsour Legal Costs Pty Ltd* [2006] QDC 485, BD2347 of 2005 para 18.

¹⁴ [2003] 1 Qd R 1, McMurdo P, 11 and Ambrose J, 22, 23.

¹⁵ [2005] QDC 94

¹⁶ *Amos v Monsour Legal Costs Pty Ltd* [2006] QDC 485, BD2347 of 2005 para 25.

¹⁷ Above, para 31.

to be extended in assessing the reasonableness of a charge on an indemnity costs assessment; an "outlandish" charge would be an unreasonable charge. The judge recognised however that reasonableness should be assessed in the light of the charges ordinarily payable for the work (UCPR r 704(3)(c)) and a complete disjunction between a charge and the fees ordinarily payable for similar work by the profession may help identify the charge as unreasonable.¹⁸

- [18] The judge accepted the magistrate's conclusion that Monsour P/L acted reasonably in entering into the costs agreement with its solicitors because Mr Amos's claim against it reflected upon its professional reputation and upon the professional reputation and standing of its costs assessor, Mr Monsour. Monsour P/L had reason to feel apprehensive about Mr Amos's conduct of the litigation because of the default judgment he obtained without notice. Unlike the magistrate the judge did not consider the litigation was complex, although his Honour accepted it was not without its difficulties and was of considerable importance to both Monsour P/L and Mr Monsour, justifying the retention of Monsour P/L's solicitor-advocate, a person accepted as experienced in litigation and possessing "extreme" expertise in the relevant areas of law in issue in the dispute.¹⁹ Monsour P/L was entitled to adopt a cautious, even an over-cautious, approach to Mr Amos's litigation. Monsour P/L's lawyers were entitled to prepare the case thoroughly and carefully and it was not unfair that Mr Amos pay for that preparation.²⁰
- [19] Unlike the magistrate, the judge considered that for an "extreme expert", 5.5 hours research as to the appropriateness of indemnity costs and for "drawing a submission" bordered on the unreasonable. But as the magistrate was exercising a discretion, the judge was not ultimately satisfied the magistrate had erred in this respect.²¹
- [20] The judge concluded, however, that the time charged for witness examination was unreasonable measured against the standard of an experienced and skilled advocate and halved the amounts so claimed.²² The judge was otherwise satisfied that the magistrate's assessment of Monsour P/L's indemnity costs was within the range of a sound exercise of discretion and did not interfere. Ultimately his Honour allowed the appeal to the extent of reducing the award by \$4,490.00 but otherwise dismissed it.

The relevant provisions of the UCPR

- [21] The relevant provisions are contained in UCPR Ch 17 Pt 2 (Costs) and are as follows:

"Division 1 – Preliminary

678 Application

- (1) This part applies to costs payable or to be assessed under an Act, these rules or an order of the court.

...

¹⁸ Above, para 33.

¹⁹ Above, para 38.

²⁰ Above, para 43.

²¹ Above, para 40.

²² Above, para 43.

679 Definitions

In this part—

assessed costs means costs and disbursements assessed under this part.

...

registrar means the registrar approved to assess costs by –

...

(c) for a Magistrates Court—the Chief Magistrate.

...

680 General provision about costs

(1) The costs a court may award—

- (a) may be awarded at any stage of a proceeding or after the proceeding ends; and
- (b) must be decided in accordance with this part.

...

681 Costs in proceeding before Magistrates Court

(1) This rule applies to a proceeding before a Magistrates Court.

(2) The magistrate must make an order setting the amount of the costs of the proceeding.

(3) However, the magistrate may, having regard to the nature and complexity of the proceeding, order that the costs of the proceeding be assessed by the registrar.

...

684 Registrar to assess costs

(1) Unless the court orders otherwise, the registrar must assess costs under this part.

...

685 Assessed costs to be paid unless court orders otherwise

(1) If, under these rules or an order of the court, a party is entitled to costs, the costs are to be assessed costs.

(2) However, instead of assessed costs, the court may order a party to pay to another party –

...

- (c) an amount for costs decided by the court; or
- (d) an amount for costs to be decided in the way the court directs.

...

Division 2 – Entitlement to costs

...

690 Solicitors' costs

- (1) For assessing costs on the standard basis under this part, a solicitor is entitled to charge and be allowed the costs under the scales of costs for work done for or in a proceeding in the court.
- (2) The scales of costs are in –
 - (a) for the Supreme Court—schedule 1; or
 - (b) for the District Court—schedule 2; or
 - (c) for Magistrates Courts—schedule 3.
- (3) For an assessment for Magistrates Courts on the standard basis, the scale in schedule 3 appropriate for the amount the plaintiff recovers applies.
- (4) For an assessment for Magistrates Courts on the indemnity basis, the scale in schedule 3 appropriate for the amount the plaintiff claims applies.

...

Division 3 – Costs of a party in a proceeding

...

704 Indemnity basis of assessment

- (1) The court may order costs to be assessed on the indemnity basis.
- (2) Without limiting subrule (1), the court may order that costs be assessed on the indemnity basis if the court orders the payment of costs –
 - (a) out of a fund; or
 - (b) to a party who sues or is sued as a trustee; or
 - (c) of an application in a proceeding brought for noncompliance with an order of the court.
- (3) When assessing costs on the indemnity basis, the registrar must allow all costs reasonably incurred and of a reasonable amount, having regard to –
 - (a) the scale of fees prescribed for the court; and
 - (b) any costs agreement between the party to whom the costs are payable and the party's solicitor; and
 - (c) charges ordinarily payable by a client to a solicitor for the work."

[22] Chapter 17 Pt 2 Div 4 of the UCPR sets out the power of the registrar to assess costs; Div 5 sets out the procedure preceding an assessment of costs by a registrar and default assessments; Div 6 sets out the procedure on a registrar's assessment and Div 7 sets out the procedure for a review of the registrar's assessment.

The construction of the UCPR as to the award of costs, including indemnity costs, in the Magistrates Court

[23] Mr Amos's contentions as to the construction of the UCPR are as follows. The magistrate was required either to set the amount of costs under UCPR r 681(2) or order that the costs be assessed by the registrar; the magistrate had no power under the UCPR to conduct her own assessment of the costs. Mr Amos has been denied

the benefit of the process that would have been available to him had the assessment been before a registrar. Further, any assessment of costs on the indemnity basis under UCPR r 704 is subject to UCPR r 690(4) and limited by the scale in Sch 3 appropriate for the amount the plaintiff claimed.

- [24] As the primary judge noted, the latter contention was considered in *Asset Loan Company Pty Ltd v Mamap Pty Ltd*²³ where his Honour Judge McGill stated:
 "It is true that [UCPR r 690(3)] refers to the registrar allowing costs, whereas in the Magistrates' Courts costs are commonly assessed by the magistrates. I do not, however, think that that has the effect that r 704 does not apply in the Magistrates' Courts. In my opinion, the proper relationship between r 690 and r 704 is that, when costs are being assessed on an indemnity basis under r 704, the scale of fees to which regard is to be had under sub-rule (3)(a) in the case of the Magistrates' Courts is the scale of fees identified by r 690(4)." (footnotes omitted)
- [25] Like the judge whose order is the subject of this application, we respectfully agree with Judge McGill's approach in *Asset*. It is consistent with the placement of r 690 and r 704 in separate but sequential Divisions of Part 2 of Chapter 17 of the UCPR.
- [26] Mr Amos's alternative contention, that a magistrate can only set (not assess) the amount of costs under r 681(2), is semantic hair splitting. How can a magistrate set the amount of the costs of a proceeding without making some sort of assessment? In order to comply with the mandatory terms of r 681(2), a magistrate is entitled to and would ordinarily hear submissions and receive relevant material so as to make some form of assessment of the costs claimed. Sub-rule 681(2) contemplates that the assessment of the costs before setting the amount of costs may be done in a summary way. Sub-rule 681(3) gives the magistrate a discretion in more complex cases to order the costs of the proceeding be assessed by the registrar. In the present case the magistrate chose, as she was entitled under the mandatory terms of r 681(2), to set the amount of costs herself, even though this process ultimately involved an assessment which took up most of a day. Although the procedures applicable to the review or reconsideration of a registrar's assessment of costs under Division 7 did not apply to the cost-setting procedure adopted by the Magistrate, Mr Amos was not materially disadvantaged by the process adopted. Significantly, he had a right of appeal from the Magistrates decision to the District Court which he later exercised.²⁴ While r 704(3) refers only to "the registrar", the registrar's authority comes from the court (see UCPR r 679) so that r 704(3) equally applies to an assessment of costs by a magistrate setting the amount of costs under r 681(2).
- [27] Mr Amos's contentions that the judge and magistrate erred in construing the UCPR fail.
- [28] Although Mr Amos is not now submitting there is no power to award indemnity costs in the Magistrates Court, it was suggested in the course of argument (as it was below and in *Asset*) that the effect of this Court's decision in *Beardmore v Franklins Management Services Pty Ltd*²⁵ was that indemnity costs were not available in the

²³ [2005] QDC 295, Appeal 3 of 2005, McGill DCJ, 14 October 2005, para 47.

²⁴ *Amos v Monsour Legal Costs Pty Ltd* [2005] QDC, BD1204 of 2004, Wylie DCJ, 17 May 2005.

²⁵ [2003] 1 Qd R 1.

Magistrates Court. McMurdo P's observations in *Beardmore*²⁶ said to support that contention were a bare recital of the submissions made by both counsel. McPherson JA did not consider the question. *Beardmore* is not authority for the proposition that indemnity costs are not available in the Magistrates Court.

Does the concept of reasonableness under UCPR r 704(3) when assessing costs on the indemnity basis involve a consideration of proportionality?

[29] A determination of whether indemnity costs are "reasonably incurred" and "of a reasonable amount" within the meaning of those terms in UCPR r 704(3) will involve a consideration, at the time of the assessment of the costs, of all relevant circumstances pertaining in the particular case. As de Jersey CJ noted in *Bottoms v Reser*:²⁷ "... In such an assessment, no niggardly or unduly narrow approach would be warranted."²⁸ That is because indemnity costs are exceptional and are awarded only for good reason, here, because Mr Amos's conduct of the litigation effectively amounted to an abuse of process entitling Monsour P/L to be fully compensated for its reasonable expenses in defending the action. Sub-rule 704(3) in its terms requires the consideration of the scale of fees prescribed for the court (r 704(3)(a)); the costs agreement between the party in whose favour the costs order is made (r 704(3)(b)) and the charges ordinarily payable by a client to a solicitor for the work (r 704(3)(c)). Other matters may also be relevant in a particular case. UCPR r 704(3)(a) by necessary implication requires the consideration of an element of proportionality. Cases from other jurisdictions are necessarily of limited assistance in construing the UCPR as they turn on their own facts and statutory provisions. An approach to the concept of reasonableness under r 704(3) which involves a consideration of proportionality is, however, consistent with the approach taken in *Skalkos v T & S Recoveries Pty Ltd*,²⁹ *Moore v Moore*,³⁰ *Yvancich v Kennedy (No 2)*,³¹ *McKeand v Thomas*³² and *Lownds v Home Office*.^{33, 34}

[30] The scale of fees applicable in the Magistrates Court (r 704(3)(a)) is but one consideration in determining reasonableness under r 704(3). Also relevant are issues such as Monsour P/L's costs agreement with its lawyers (r 704(3)(b)) and charges ordinarily payable by a client to a solicitor for the work (r 704(3)(c)). We are not persuaded that either the magistrate or the judge failed to give due weight to the issue of the amount of costs expended by Monsour P/L under the costs agreement with its lawyers relative to the amount of fees ordinarily payable under the Magistrates Court scale of fees or to the related issue of the amount of Mr Amos's claim against Monsour P/L. Both the magistrate and the judge rightly accepted it was reasonable in the circumstances for Monsour P/L to enter into the costs agreement with its solicitors. As the learned judge noted, Monsour P/L was defending its professional reputation and the professional reputation and standing of its costs assessor, Mr Monsour. Monsour P/L had good reason to feel apprehensive about Mr Amos's conduct of the litigation and to defend it vigorously by

²⁶ [2003] 1 Qd R 1, 11 para 24.

²⁷ [2000] QSC 413.

²⁸ Above, p 5.

²⁹ (2005) 65 NSWLR 151, 153.

³⁰ [2004] NSWSC 587, para 46.

³¹ [2004] NSWCA 397, para 6.

³² [2006] NSWSC 1356, para 22, 24, 25.

³³ [2002] 1 WLR 2451.

³⁴ These cases are necessarily of limited assistance as they turn on their own facts and statutory provisions or rules.

exhaustively preparing its defence. Whilst we share his Honour's concern as to whether the preparation time claimed by Monsour P/L's lawyers bordered on the unreasonable (relevant under r 704(3)(c)), his Honour was entitled to ultimately conclude that the magistrate's determination that it was reasonable was open in the circumstances.

[31] This contention also fails.

The remaining contentions

[32] The third contention and the remaining matters raised in the proposed notice of appeal all deal with the magistrate's exercise of discretion in assessing and setting the amount of the indemnity costs. They do not raise matters which warrant the granting of leave to appeal to this Court from an appeal to the District Court concerning a costs assessment in the Magistrates Court.

Conclusion

[33] Mr Amos's first two contentions³⁵ raise matters of considerable practical importance beyond the immediate interests of the present parties in areas where there may be uncertainty as to the meaning of the UCPR. They are appropriate matters warranting the grant of leave to appeal to this Court. For the reasons given, however, Mr Amos's contentions fail and his appeal should be dismissed.

Another matter

[34] During the hearing we asked the parties whether there were any statutory provisions giving power to Magistrates Courts to award costs. At common law courts have no inherent jurisdiction to award costs. The power to award costs is a creature of statute: *Knight v F.P. Special Assets Ltd.*³⁶ Neither party contends that the Magistrates Court lacks power to award costs and both accept that the UCPR give the Magistrates Court that power: UCPR r 3 and r 689(1).

[35] It is a little surprising that the *Magistrates Courts Act 1921* (Qld) no longer confers a general power to award costs in civil proceedings, save where they are started in the wrong court³⁷ or in ADR processes.³⁸ Prior to the UCPR coming into effect, there was provision under the *Magistrates Courts Act* s 14(f)³⁹ for the Governor in Council to make rules of court for "costs, including the fees to be allowed to barristers and solicitors, whether as between party and party, solicitor and client, or otherwise, and the expenses to be paid to witnesses". By contrast the *Supreme Court Act 1995* (Qld) s 221 currently gives the Supreme Court power to award costs in all cases brought before it. The *District Court of Queensland Act 1967* (Qld) s 69(1) gives the District Court all the powers and authorities of the Supreme Court in respect of civil jurisdiction. The *Supreme Court of Queensland Act 1991* (Qld) s 118(1) gives the Governor in Council power to make rules of court for: "(a) the practices and procedures of the Supreme Court, the District Court, or the Magistrates Courts or their registries ...". It seems likely that the UCPR are statutory rules and subordinate legislation under the *Statutory Instruments Act 1992* (Qld) s 8 and s 9 so that the UCPR independently provide sufficient statutory framework to empower the Magistrates Court to award costs in civil matters.

³⁵ See these reasons, [6].

³⁶ (1992) 174 CLR 178, 182.

³⁷ Section 5A(4).

³⁸ Section 30(2)(b).

³⁹ Repealed by the *Courts Legislation Amendment Act 1995* (Qld), Act No 23 of 1995.

[36] We note that the issue has not been argued before this Court in any considered way. We are presently satisfied that, despite the absence of any specific provision in an Act giving the Magistrates Court power to award costs, UCPR Chapter 17 provides an effective statutory basis for Magistrates Courts to award costs.

ORDER:

1. The application for leave to appeal is granted but limited to the applicant's first two contentions set out in paragraph [6] of these reasons.
2. The appeal is dismissed with costs to be assessed.