SUPREME COURT OF QUEENSLAND

CITATION:	*Neray Holdings Pty Ltd v Spina (No 2)* [2009] QSC 45
PARTIES:	**NERAY HOLDINGS PTY LTD ACN 009 706 245** (applicant) v **ALBA MARIA SPINA, JENNIFER FORBES, GEOFFREY ULLMAN** (respondents)
FILE NO:	12725/2008
DIVISION:	Trial Division
PROCEEDING:	Originating Application
DELIVERED ON:	10 March 2009
DELIVERED AT:	Supreme Court, Brisbane
HEARING DATE:	18 December 2008
JUDGE:	Wilson J
ORDER:	**That the respondents pay the applicant's costs of and incidental to the application on the standard basis, fixed in the sum of $7,500.**
CATCHWORDS:	PROCEDURE – COSTS – GENERAL RULE - COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where substantive dispute was as to the proper interpretation of a provision of the lease between the parties – where applicant won the dispute – whether respondents should be ordered to pay applicant's costs of and incidental to the application on the standard basis – whether the quantum of costs should be fixed under r 687(2)(c) of the *Uniform Civil Procedure Rules 1999* (Qld) *Neray Holdings Pty Ltd v Spina* [2009] QSC 040, cited *Uniform Civil Procedure Rules 1999* (Qld), r 687(2)(c)
COUNSEL:	LD Bowden for the applicant DJ Campbell SC for the respondents
SOLICITORS:	James Byrne & Rudz for the applicant Byrne Legal Group for the respondents

[1] **Wilson J**: I delivered my decision on the substantive dispute on 2 March 2009.[1] Counsel have since provided written submissions on costs.

[2] Counsel for the applicant submitted that the respondents should be ordered to pay the applicant's costs of and incidental to the application on the standard basis fixed in the sum of $7,526.80. Senior counsel for the respondents submitted that there should be no order as to costs, but if an order were to be made, it should provide for the costs to be assessed on the standard basis. He submitted that the applicant's failure to provide copies of the authorities on which it relied was a factor which should weigh against the applicant in the exercise of the Court's discretion as to costs.

[3] The substantive dispute was as to the proper interpretation of a provision of the lease between the parties. The applicant won the argument. In the ordinary course there should be an order for costs in its favour.

[4] Before it retained solicitors, the applicant sought to resolve the dispute by discussion between the parties, making overtures to the respondents on 4 June 2008, 6 July 2008 and 8 August 2008. In September 2008, it engaged solicitors who wrote to the respondents on 15 September 2008 setting out their clients' position. That elicited a response from the respondents' solicitors, which was four pages long and argumentative in tone. The respondents' solicitors asserted -

> "Our client is interested to see any authority which gives your client dispensation from the time lines stipulated in Clause 14 (a). Given that the parties are at odds as to the mechanical interpretation of the lease document, it is case law authority which is sought by our client. Our client does not believe that such authority would exist because, in its view, such authority would be counter-intuitive. However, our client is prepared to give the most serious consideration to any such cogent authority if it does exist. In the absence of such authority our client has provided instructions that it wishes to 'back' its own capacity for application of logic."[2]

[5] The respondents' solicitors confirmed their position by another letter dated 16 October 2008, without making any more express reference to authorities.

[6] The applicant was under no obligation to supply copies of the authorities on which it relied, and in all the circumstances I do not regard its failure to do so as a reason to depart from the usual order as to costs.

[7] Messrs Hickey & Garrett, legal costs consultants, have assessed the applicant's costs on the standard basis at $7,226.80. The applicant has incurred further counsel's fees of $300 for attending on delivery of judgment.

[8] As counsel for the respondents observed in his submissions on costs, at the hearing a number of authorities were handed up by the respondents, and they were referred to in the reasons for judgment. He went on -

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1 *Neray Holdings Pty Ltd v Spina* [2009] QSC 040.

2 See Letter Byrne Legal Group to James Byrne & Rudz of 29 September 2008 ex "SR-2" to Affidavit of Stephen Rudz filed 10/12/08 (Court document number 3).

> "Those authorities are also reflected in the Applicant's costs which include photocopying and engrossing."[3]

[9] With respect, it is not at all clear that they are reflected in Hickey & Garrett's assessment. The professional fees as assessed include $127.60 for engrossing and $34.20 for photostatting. These are modest amounts, which may well relate to the preparation of the affidavits and exhibits. I cannot perceive any connection, even in principle, between photocopying authorities and "engrossing".

[10] It is in the interests of the parties and of the administration of justice that costs questions be dealt as expeditiously as reasonably possible in the circumstances of any given case. This policy is reflected in Practice Direction 3 of 2007 (as amended on 17 December 2008),[4] which streamlines the procedure for fixing the quantum of costs under rule 687(2)(c) of the *Uniform Civil Procedure Rules 1999* (Qld). Of necessity the Court takes a somewhat broad brush approach to fixing the quantum of costs.

[11] In the present case there should be an order that the respondents pay the applicant's costs of and incidental to the application on the standard basis, fixed in the sum of $7,500.

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3 See Respondents' Further Submissions (6 March 2009), p. 2.

4 See Queensland Law Reporter 31/01/09.