

SUPREME COURT OF QUEENSLAND

CITATION: *VDMT Pty Ltd & Anor v Francher Pty Ltd (No. 2)* [2010] QSC 18

PARTIES: **VDMT PTY LTD ACN 079 980 626**
First Plaintiff
NOONBREEZE PTY LTD ACN 083 148 145
Second Plaintiff
V
FRANCHER PTY LTD ACN 113 257 408 AS TRUSTEE FOR THE FRANCHER UNIT TRUST
Defendant

FILE NO/S: BS 7190 of 2007

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5 February 2010

DELIVERED AT: Brisbane

HEARING DATE: Written submissions

JUDGE: McMurdo J

ORDER: **The plaintiffs pay to the defendant its costs of the proceedings, including reserved costs, save insofar as any part of the proceedings has been the subject of a previous order for costs.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where plaintiff rejected defendant’s Offer to Settle and plaintiff’s claim was subsequently dismissed – whether defendant entitled to costs on the indemnity basis from the day upon which it made the Offer to Settle
Uniform Civil Procedure Rules, r 361, r 702(1)
Astway Pty Ltd v Council of the City of the Gold Coast [2007] QSC 224

SOLICITORS: MCKays for the plaintiffs
BCI Lawyers for the defendant

- [1] Last year I gave judgment in this proceeding, dismissing the plaintiffs' claim. This judgment concerns costs.
- [2] The unsuccessful plaintiffs concede that they should be ordered to pay the defendant's costs of the proceeding, including reserved costs. They exclude from that concession orders for costs already made in their favour.
- [3] The defendant says that its costs should be paid on the indemnity basis from 4 August 2009, which was the day upon which it sent an Offer to Settle. It was on terms that "each party discontinues any and all of its claims" and that each party would bear its own costs.
- [4] The case is not within *UCPR* r 361 because the plaintiffs did not obtain a judgment: rather their claim was dismissed. In relevantly the same circumstances Margaret Wilson J so held in *Astway Pty Ltd v Council of the City of the Gold Coast*.¹ Her Honour saw no reason to award indemnity costs to the successful defendant.
- [5] The position is that the defendant is entitled to its costs but there must be some particular reason for departing from the ordinary basis for assessment. The plaintiffs' refusal of the Offer to Settle does not, in the circumstances of this case at least, provide that reason. The offer was made relatively close to the trial. The plaintiffs had an arguable case and there can be no basis for criticism of the manner in which that case was conducted.
- [6] It will be ordered that the plaintiffs pay to the defendant its costs of the proceedings, including reserved costs, save insofar as any part of the proceedings has been the subject of a previous order for costs. Those costs will be assessed upon the standard basis: r 702(1).

¹ [2007] QSC 224.