

# SUPREME COURT OF QUEENSLAND

CITATION: *Yara Nipro Pty Ltd v Interfert Australia Pty Ltd (No. 2)*  
[2010] QSC 19

PARTIES: **YARA NIPRO PTY LTD (ACN 066 700 276)**  
Plaintiff  
**V**  
**INTERFERT AUSTRALIA PTY LTD**  
**(ACN 112 758 666)**  
Defendant

FILE NO/S: BS 8849 of 2008

DIVISION: Trial Division

PROCEEDING: Hearing

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5 February 2010

DELIVERED AT: Brisbane

HEARING DATE: Written submissions

JUDGE: McMurdo J

ORDER: **The plaintiff will be ordered to pay to the defendant its costs upon the claim and counterclaim, to be assessed on the standard basis.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF ISSUES – GENERALLY – where plaintiff proved claim for damages but less than the admitted counterclaim – whether defendant should have the costs of the claim and counterclaim

*Trade Practices Act 1974 (Cth)*

*Uniform Civil Procedure Rules, r 681(1), r 684, r 684(2)*

*Australand Corporation (Qld) Pty Ltd v Johnson & Ors*  
[2007] QSC 128

*BHP Coal Pty Ltd & Ors v O&K Orenstein & Koppel AG & Ors (No.2)* [2009] QSC 64

*Hanak v Green* [1958] 2 QB 9

*Todrell Pty Ltd v Finch (No. 2)* [2008] 2 Qd R 95

*Yara Nipro Pty Ltd v Interfert Australia Pty Ltd & Anor*

[2009] QSC 314

SOLICITORS: Hemming + Hart for the plaintiff  
McKays as town agents for Philip Farlam Legal Consulting  
(Adelaide) for the defendant

- [1] This judgment concerns the costs of the proceeding which I otherwise determined last year.<sup>1</sup> I ordered that the plaintiff's claim be dismissed and that the defendant have judgment on its counterclaim for \$77,058.65. That figure was the amount of the counterclaim of \$907,061 less the damages assessed in favour of the plaintiff of \$840,048.69. There was no issue as to the counterclaim or that the claim and counterclaim should be set off and there should be a judgment for the balance.
- [2] The plaintiff submits that it should have its costs of the "action" by which it means the whole of the proceedings between the plaintiff and the defendant.
- [3] The defendant submits that costs should follow the events, which are the dismissal of the plaintiff's claim and a judgment in its favour on the counterclaim, so that it should have the costs of the entire proceedings.
- [4] The issues which occupied most of the trial concerned the effect or otherwise of the force majeure clause and the assessment of damages on the plaintiff's claim. The plaintiff was successful on that first issue but was substantially unsuccessful on the second issue. It was also unsuccessful on its alternative claim under the *Trade Practices Act 1974* (Cth).
- [5] The outcome of the trial was that the defendant was shown to have had a complete defence to the plaintiff's claim: its undisputed debt owing by the plaintiff was more than the damages proved by the plaintiff. The fact that it raised another matter as an alternative defence to the proceeding (the force majeure claim) need not result in a different order for costs. Ordinarily a successful party is not denied its costs because it has succeeded on one argument and not on an alternative case.<sup>2</sup> By *UCPR* r 681(1), ordinarily costs should follow the event. By r 684(1), an order may be made for the costs of a particular question in, or a particular part of, a proceeding and by r 684(2), a court may declare what percentage of the costs of the proceeding is attributable to that question or part. This may provide a wider discretion than previous rules in Queensland<sup>3</sup>, but there must still be some basis for departing from the ordinary rule. The fact that one matter was unsuccessfully argued as a complete defence does not in this case justify that departure. As there was a complete defence to the plaintiff's claim, the defendant should have its costs on the claim.
- [6] Similarly, the result is that the defendant has always been entitled to the sum which it was awarded upon its counterclaim. In principle the costs of the counterclaim should follow that event.
- [7] The orders sought by the defendant would accord with the outcome in *Hanak v Green*.<sup>4</sup> That has become a leading case on the principle of equitable set-off, but the

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<sup>1</sup> [2009] QSC 314.

<sup>2</sup> *Australand Corporation (Qld) Pty Ltd v Johnson & Ors* [2007] QSC 128 at [17]; *Todrell Pty Ltd v Finch (No. 2)* [2008] 2 Qd R 95 at [21]; *BHP Coal Pty Ltd & Ors v O&K Orenstein & Koppel AG & Ors (No.2)* [2009] QSC 64.

<sup>3</sup> *Todrell Pty Ltd v Finch (No. 2)* [2008] 2 Qd R 95 at [13].

<sup>4</sup> [1958] 2 QB 9.

appeal ultimately concerned only the issue of the proper order for costs in circumstances such as the present case. At first instance, the owner recovered £74 against her builder and the builder £84 upon his counterclaim and the successful party on each judgment was given her or his costs. The defendant appealed, contending that his counterclaim should have been treated as a set-off and therefore the plaintiff should have recovered nothing and that he should have recovered the balance and the costs of the entire proceeding. The Court of Appeal upheld those arguments. Morris LJ said that the fair order to make as to costs, once there was substituted a judgment for the counterclaim for the net sum, was for costs in favour of the defendant on the claim and costs in his favour on the counterclaim albeit it on an apparently lower scale.

- [8] In my conclusion that should be the outcome here. Absent any offer to settle, costs should follow the events on the claim and counterclaim.
- [9] The plaintiff will be ordered to pay to the defendant its costs upon the claim and counterclaim, to be assessed on the standard basis.