

# SUPREME COURT OF QUEENSLAND

CITATION: *Osaka Enterprises Pty Limited v Seaview Pacific Pty Limited (No 2)* [2010] QSC 186

PARTIES: **OSAKA ENTERPRISES PTY LIMITED ACN 062 874 560**  
(Plaintiff)

v

**SEAVIEW PACIFIC PTY LIMITED ACN 112 132 939**  
(Defendant)

FILE NO/S: 9806 of 2009

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 31 May 2010

DELIVERED AT: Brisbane

HEARING DATE: Written submissions

JUDGE: McMurdo J

ORDER: **The plaintiff is to pay the defendant's costs of the proceedings.**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COSTS OF WHOLE ACTION – GENERALLY – where the proceedings were determined in the defendant's favour – where four defences were raised but only one was upheld – whether this case is an exception to the general rule that costs should follow the event.

*Uniform Civil Procedure Rules 1999 (Qld) r 681, cited*

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

*Osaka Enterprises Pty Limited v Seaview Pacific Pty Limited* [2010] QSC 112, cited

*Waterman v Gerling Australia Insurance Co Pty Ltd (No 2)* [2005] NSWSC 1111, cited

COUNSEL: N O'Bryan SC with S E Brown for the plaintiff  
M D Martin for the defendant

SOLICITORS: J M Goncalves for the plaintiff  
Tucker & Cowen Solicitors for the defendant

- [1] This judgment concerns the costs of the proceedings which I determined in the defendant's favour.<sup>1</sup> The plaintiff's claim was dismissed and I gave judgment for the defendant on its counterclaim. The defendant seeks its costs of the proceedings to be assessed upon the standard basis. The plaintiff concedes that it should pay some of the defendant's costs, but only to the extent of 70 per cent.
- [2] The plaintiff's argument is that of the four defences which were raised,<sup>2</sup> only one was upheld. Further, it is said that one of the others was without any foundation, because it was clearly precluded by an estoppel.<sup>3</sup> The question then is whether those circumstances make this case an exception to the general rule that costs should follow the event.<sup>4</sup> The fact that a successful party has failed on some of its arguments is not in itself a basis for departing from the general rule.<sup>5</sup>
- [3] The hearing occupied one day. But it may be accepted that the defendant's costs were somewhat higher for having advanced these other arguments. Nevertheless, none of the arguments, including that singled out by the plaintiff in this context, was so hopeless as to justify some impact upon the ordinary rule as to costs. Importantly, the extent of the evidence, and therefore the cost involved in its preparation and presentation, would not have been significantly different had only the successful point been argued. In my conclusion the plaintiff should pay the defendant's costs of the proceedings to be assessed.

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<sup>1</sup> *Osaka Enterprises Pty Limited v Seaview Pacific Pty Limited* [2010] QSC 112.

<sup>2</sup> See *Ibid*, [2].

<sup>3</sup> *Ibid*, [40].

<sup>4</sup> *Uniform Civil Procedure Rules 1999* (Qld) r 681.

<sup>5</sup> As I held in *Australand Corporation (Qld) Pty Ltd v Johnson & Ors* [2007] QSC 128, [17] following *Waterman v Gerling Australia Insurance Co Pty Ltd (No 2)* [2005] NSWSC 1111, [10].