

SUPREME COURT OF QUEENSLAND

CITATION: *Northtronics Pty Ltd v Coutts-Smith (No 2)* [2011] QSC 354

PARTIES: **NORTHTRONICS PTY LIMITED**
ACN 102 205 096
(plaintiff)
v
GEOFFREY COUTTS-SMITH
(defendant)

FILE NO: BS9881 of 2010

DIVISION: Trial Division

PROCEEDING: Application for review of costs assessor's certificate

DELIVERED ON: 25 November 2011

DELIVERED AT: Brisbane

HEARING DATE: Plaintiff's written submissions dated 30 September 2011 and filed by leave on 7 October 2011, letter from plaintiff's solicitors dated 7 November 2011, defendant's written submissions received 7 November 2011

JUDGE: Mullins J

ORDER: **As per the amended draft initialled by Mullins J and placed with the file**

CATCHWORDS: PROCEDURE – COSTS – COSTS ASSESSMENT – REVIEW – where plaintiff was substantially successful in opposing the application for review of costs assessor's certificate and entitled to an order for payment of its costs on the standard basis – where plaintiff requested the court to fix amount for costs – where defendant submitted that the order should be for costs to be assessed – whether the court should exercise the discretion to fix the costs

Uniform Civil Procedure Rules, r 687

COUNSEL: G J Robertson for the plaintiff
R Brandon for the defendant

SOLICITORS: McCullough Robertson for the plaintiff
Morgan Conley Solicitors for the defendant

[1] These reasons should be read in conjunction with those I published on 7 October 2011: *Northtronics Pty Ltd v Coutts-Smith* [2011] QSC 302 (the decision on the outstanding objections).

[2] The issue that remained outstanding after the publication of the decision on the outstanding objections was the form of order for the costs of the application for

review of the costs assessor's certificate. I indicated at [17] of the decision on the outstanding objections that I was proposing to order in favour of the plaintiff for payment of its costs on the standard basis. The plaintiff in its submissions dated 30 September 2011 sought costs to be fixed in the sum of \$39,033.64 in reliance in r 687(2)(c) of the *Uniform Civil Procedure Rules*. The issue that required further submissions was whether I should fix the costs and, if so, for what amount or whether I should order that the defendant pay the plaintiff's costs of the application for review to be assessed.

- [3] The parties have reached agreement on the form of the draft order that reflects the outcome of the application for review of the costs assessor's certificate. The amount for which costs had been assessed that was set out in the costs assessor's certificate was incorporated in an order for payment of that amount of costs by the defendant to the plaintiff that was made by a Deputy Registrar of the court on 2 March 2011. That means that the order made on 2 March 2011 will have to be varied so that the defendant is ordered to pay the plaintiff's costs in the sum of \$147,976.27 instead of the sum of \$152,519.84.
- [4] In view of the procedural history of this matter since the plaintiff obtained its order for costs on 5 November 2010, there are good reasons for bringing the matter to a conclusion by fixing the costs of the application that was heard by me, particularly the saving of further legal costs to both parties.
- [5] I had no difficulty with the plaintiff's approach to putting material before the court relevant to the quantification of its costs of the application for review. This was done in annexure C to the submissions dated 30 September 2011. That annexure sets out details of the amounts invoiced by the plaintiff's solicitors to the plaintiff for the application by reference to the date of the invoice, the time spent by the identified employee of the plaintiff's solicitors, the charge out rate of that employee, and a summary of the disbursements. The amount invoiced to the plaintiff between 28 February and 30 September 2011 for professional costs was \$56,337.47 and \$24,673.84 for disbursements. The annexure then contains a re-calculation of the time recorded for solicitors and law clerks at the scale rate per hour. A further reduction was then made of 25 per cent of the professional fees on the basis that would reflect that on a standard basis of assessment not all costs claimed would be allowed. This resulted in the amount sought for fixed costs of \$39,033.64, comprising professional costs of \$14,359.80 and disbursements of \$24,673.84.
- [6] There is an assumption in this approach of the plaintiff's solicitors that it is only professional costs that are vulnerable to reduction on an assessment of standard costs. The disbursements include counsel's fees, some of which may not be allowed in full on an assessment. There are other disbursements which may also not be recoverable or fully recoverable, such as Insolvency and Trustee Services Australia filing fees of \$440 (which does not seem to relate to the application for review) and process server's fees.
- [7] One of the reasons that the defendant opposes the fixing of the costs is that there were errors identified by the costs assessor and the court in relation to the costs statement that was produced by the plaintiff's solicitors for the purpose of the assessment of the plaintiff's costs pursuant to the order made on 5 November 2010. It is submitted that without review of the plaintiff's costs claimed for the application of review "there can be no substantiation that there is not a similar pattern of

errors.” Such approach overlooks the different exercise which the court is being requested to undertake in globally fixing the standard costs of an application. The difference between a standard letter and a formal letter which was one of the main reasons for the slight reduction in the costs assessment on the application for review of that assessment before me does not arise in the exercise that the court has been requested to undertake pursuant to r 687(2)(c) of the *UCPR*. For similar reasons, the defendant’s suggestion that the application of a proportional deduction of the plaintiff’s costs in line with the total deduction made in the costs statement that was subject of assessment and review by the court lacks any logical basis.

- [8] I appreciate that the parties wish to minimise costs by avoiding unnecessary court appearances. In fact, the plaintiff’s solicitors in their letter dated 7 November 2011 to my Associate (which will be exhibit 1) specifically stated that the plaintiff did not wish to list the matter for oral hearing. In the absence of the parties’ solicitors engaging on the quantum and resolving any discrepancies of the type that I have identified amongst themselves, I am left without the opportunity to explore the queries that I have in relation to the plaintiff’s summary of the costs and disbursements that forms the basis of its claim for fixed costs. I therefore decline to exercise the discretion that is conferred by r 687(2)(c) of the *UCPR*, and I will merely order that the defendant pay the plaintiff’s costs of the application for review to be assessed.
- [9] I have therefore amended the draft order that has been prepared by the plaintiff so that paragraph 3 refers to “The order filed on 2 March 2011” in lieu of “The order dated 4 February 2011” and paragraph 4 now reads “The defendant pay the plaintiff’s costs of the application for review to be assessed.” I make an order in terms of the amended draft initialled by me and placed with the file.