

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

FRYBERG J

No 4215 of 2011

JOHN HAI ZHANG AND HONGYI WU

Applicants

and

SOUTH SKY INVESTMENTS PTY LIMITED

Respondent

BRISBANE

..DATE 02/12/2011

JUDGMENT

HIS HONOUR: This matter was heard by me in Brisbane on the 1st of September. In my judgment the application should be dismissed. I shall hear the parties as to consequential orders and costs. I publish my reasons.

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The successful respondent seeks an order for costs on the indemnity basis. The unsuccessful applicants have not opposed an order for costs but do submit that it should not be on the indemnity basis. The claim for the costs on the indemnity basis is made because clause 7.3 of the contract provided that the seller, that is to say the successful respondent, would be entitled to damages for any loss which it suffered as a result of the buyer's default, including legal costs on a full indemnity basis.

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It seems to me that the legal costs of resisting the present application can fairly be categorised as having been suffered as a result of the buyer's default and that in consequence were the respondent to bring proceedings for damages in the amount of their costs in the present proceedings, or in the amount of their costs in the present proceedings less any costs paid under a standard assessment, they would be successful.

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To bring such proceedings would mean additional costs for both sides and delay which, it seems to me, would achieve nothing. Effectively the just result can be achieved by the order which

the respondent seeks. I therefore order that the applicants  
pay the respondent's costs assessed on the indemnity basis.

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I grant the applicant's leave to appeal against so much of the  
costs order as orders assessment of costs on the indemnity  
basis.

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