

SUPREME COURT OF QUEENSLAND

CITATION: *Reid & Anor v Stephens Luxury Homes Pty Ltd & Anor (No 2)* [2012] QSC 231

PARTIES: **DAVID JOHN REID & SUZANNE REID AS TRUSTEE FOR THE REID FAMILY TRUST**
(first plaintiff)
and
DAVID JOHN REID
(second plaintiff)
v
STEPHENS LUXURY HOMES PTY LTD
ACN 122 488 911 AS TRUSTEE FOR STEPHENS DRH TRUST
(first defendant)
and
RUSSELL STEPHENS
(second defendant)

FILE NO/S: 8710 of 2009

DIVISION: Trial

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 31 August 2012; 27 July 2012

DELIVERED AT: Brisbane

HEARING DATES: 14-18 May 2012

JUDGE: Dalton J

ORDER: **First and second defendants pay the first and second plaintiffs' costs of and incidental to the proceeding to be assessed or agreed on a standard basis.**

COUNSEL: Mr IA Erskine for the plaintiffs
No appearance for the defendants

SOLICITORS: TressCox Lawyers for the plaintiffs
No appearance for the defendants

[1] I gave judgment for the plaintiffs in this matter on 27 July 2012. The plaintiffs apply for indemnity costs on two bases.

[2] The first basis is that an offer had been made on 3 May 2012 in accordance with Part 5 chapter 9 of the UCPR. I am satisfied that such an offer was made and I am satisfied that the defendant did not accept the offer. Further, I am satisfied that the

plaintiffs obtained a judgment more favourable than the settlement proposed by the terms of the offer. Thus I am satisfied of the matters referred to in r 360(1)(a) of the UCPR. However, there is no material whatsoever before me as to the matters about which I need to be satisfied pursuant to r 360(1)(b) of the UCPR. In the circumstances I will not make an indemnity costs order pursuant to r 360.

- [3] The second basis on which an indemnity costs order is sought is that during the course of the litigation, on 28 March 2011, the plaintiffs made requests for further and better particulars and requests for documents pursuant to r 222 of the UCPR, which went, in substance, unanswered such that it must have been plain that the defendants could not succeed upon the pleaded defence. The second defendant represented himself and (with leave) the first defendant at the trial of this matter. He had been acting for himself and the first defendant for some time prior to this, including as at 28 March 2011. He did not respond to the request for particulars or r 222 requests the way a lawyer would have done. Some of the documents requested, and not provided, pursuant to r 222 were crucial to claims made in the defence. The defendants did not seek to tender them during the trial. Having regard to the detailed defence and counterclaim in the matter, which was settled by counsel, I would not draw the conclusion that these documents never existed. From the defendants' conduct of the trial, it is clear that the second defendant did not appreciate the difficulties which his non-production of the pleaded documents would create for his case. Notwithstanding the non-production of documents and the non-response (in part) to the requests for particulars, it was not impossible that the defendants would succeed in showing a defence at trial. The plaintiffs made no application after 28 May 2011 for the matter to be dismissed in circumstances short of a trial. Likewise, there was no application made based on the lack of particulars and lack of documents at the commencement of the trial: the trial proceeded for five days in the ordinary course.
- [4] Having regard to all these matters, I think the fairest order as between the parties is that costs be on a standard basis. I therefore order that the first and second defendants pay the first and second plaintiffs' costs of and incidental to the proceeding to be assessed or agreed on a standard basis.