

# SUPREME COURT OF QUEENSLAND

CITATION: *Anderson & Ors v Australian Securities and Investments Commission* [2013] QCA 88

PARTIES: **DAVID MARK ANDERSON**  
(first appellant/not a party to the application)  
**CRAIG ROBERT WHITE**  
(second appellant/not a party to the application)  
**MICHAEL CHRISTODOULOU KING**  
(third appellant/not a party to the application)  
**MARILYN ANN WATTS**  
(fourth appellant/not a party to the application)  
**GUY HUTCHINGS**  
(fifth appellant/respondent)  
v  
**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
(respondent/applicant)

FILE NO/S: Appeal No 3277 of 2012  
Appeal No 3289 of 2012  
Appeal No 3300 of 2012  
Appeal No 3341 of 2012  
Appeal No 3345 of 2012  
SC No 12122 of 2009

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 April 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Holmes and White JJA and Philip McMurdo J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application by ASIC to vary the costs orders made on 2 November 2012 is refused.**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – where appellant abandoned application to rely upon further evidence at appeal – where some submissions made to court by appellant were not accepted – where appeal was allowed – whether respondent should be ordered to pay appellant’s costs

**COUNSEL:** No appearance for the first appellant  
 No appearance for the second appellant  
 No appearance for the third appellant  
 No appearance for the fourth appellant  
 No appearance for the fifth appellant, the fifth appellant's submissions were heard on the papers  
 No appearance for the respondent, the respondent's submissions were heard on the papers

**SOLICITORS:** DibbsBarker for the first appellant  
 Brian Bartley & Associates for the second appellant  
 Tucker & Cowen Solicitors for the third appellant  
 James Conomos Lawyers for the fourth appellant  
 Kennedys Lawyers for the fifth appellant  
 Corrs Chambers Westgarth for the respondent

- [1] **HOLMES JA:** I agree with the reasons of Philip McMurdo J and the order he proposes.
- [2] **WHITE JA:** I agree with the reasons of Philip McMurdo J and the order he proposes.
- [3] **PHILIP McMURDO J:** On 2 November 2012, the Court allowed appeals by the five defendants in this case and ordered the respondent ("ASIC") to pay the costs of each appellant of his or her appeal. On 15 November, ASIC wrote to the registrar, seeking leave to make written submissions to the end of varying the costs order in favour of the appellant Mr Hutchings. That leave was granted and ASIC and Mr Hutchings filed written submissions on the question.
- [4] ASIC seeks orders that:
- (a) Mr Hutchings pay ASIC's costs of and incidental to his application to rely upon further evidence at the hearing of his appeal; and
  - (b) otherwise there be no order as to the costs of his appeal.
- [5] The first of those orders is sought upon the basis that, when the appeal was heard, Mr Hutchings did not press the application. It is said that the costs should therefore follow the outcome in that respect. The costs of that application must have been but a small part of his costs of the appeal.
- [6] The second order is sought upon the basis that Mr Hutchings' arguments did not correspond with the Court's reasons for allowing his appeal, from which ASIC submits that "it cannot be said that Mr Hutchings was successful." That could also be said about the other appellants. But ASIC says that Mr Hutchings' defence, as considered by the primary judge, was more seriously deficient than the defences of other appellants.
- [7] It is correct that some of the submissions for Mr Hutchings were not accepted by this Court. In substance however, Mr Hutchings was successful: his appeal was allowed and he was permitted to plead his case in a way which was more favourable to him than had been ordered by the primary judge. Ordinarily the general rule that

costs should follow the event is not displaced by the fact that some of the arguments for the successful party have not been accepted. Nor is it displaced by abandonment of an argument which the successful party had raised prior to the hearing. In my conclusion, ASIC has shown no reason to disturb the order made in favour of Mr Hutchings.

- [8] For Mr Hutchings, it was submitted that there was no power to disturb the order made on 2 November 2012, absent any circumstance which would engage either r 667 or r 668 of the *Uniform Civil Procedure Rules*. It is unnecessary to consider that question given my conclusion on the merits of ASIC's application.
- [9] I would order that the application by ASIC to vary the costs orders made on 2 November 2012 be refused. As I see it, the costs of that application would be within the costs of the appeal, which have been ordered in the appellant's favour.