SUPREME COURT OF QUEENSLAND

CITATION:	*Haylett v Hail Creek Coal Pty Ltd (No 3)* [2015] QSC 10
PARTIES:	**MICHAEL KEITH HAYLETT** (applicant) **v** **HAIL CREEK COAL PTY LTD** ACN 080 002 008 (respondent)
FILE NO/S:	BS 970 of 2014
DIVISION:	Trial Division
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	2 February 2015
DELIVERED AT:	Brisbane
HEARING DATE:	Written submissions
JUDGE:	Philip McMurdo J
ORDER:	**The respondent is ordered to pay the applicant's costs of the proceeding.**
CATCHWORDS:	PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – where the applicant seeks an order for his costs of the proceeding to be paid by the respondent – where the respondent resists such an order – where there is no basis from departing from the ordinary rule that a successful party should have its costs – where the respondent was ordered to pay to the applicant's costs of the proceeding *Coal Mining Safety and Health Regulation* 2001 (Qld), reg 46 *Right to Information Act* 2009 (Qld) *Davis v City North Infrastructure Pty Ltd (No 2)* [2011] QSC 312 *MBR v Parker* [2012] QCA 271
SOLICITORS:	Hall Payne Lawyers for the applicant Sparke Helmore Lawyers for the respondent

[1] This judgment determines the questions of cost in a case which I decided last year.[1] The applicant was successful and seeks an order for his costs of the proceeding to

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1 *Haylett v Hail Creek Coal Pty Ltd* [2014] QSC 176.

be paid by the respondent. The respondent resists such an order on many grounds and says that there should be no order for costs.

[2] The first of the respondent's points is that the applicant's case was ultimately markedly different from the case which he commenced. The originating application sought a declaration that, for the purposes of Regulation 46 of the *Coal Mining Safety and Health Regulation* 2001 (Qld), the task for which the applicant was employed was that of a "drill rig operator". The originating application also sought a declaration that the report of Dr Parker on 19 November 2013 did not comply with Regulation 46 "in that the assessment was not directed towards the task for which [the Applicant] was employed". Neither of those declarations was made. I declared that the report completed by Dr Parker was of no effect under Regulation 46 because, inconsistently with a decision of the Court of Appeal in another case,[2] Dr Parker had not addressed whether the worker (the applicant) was presently restricted in performing the task or tasks for which he was employed, but instead had identified a risk from the applicant's ongoing performance of that work. But the declaration I made was not significantly different from that second declaration sought by the originating application. The characterisation or description of the applicant's then duties was not ultimately relevant. What mattered was that Dr Parker had not addressed a present disability but rather a future risk.

[3] It may be correct to say that some money was spent in the applicant's attempting to prove, if it had to be proved, that his work was correctly described as that of a drill rig operator. But those costs could not have been substantial and could not be said to have significantly added to the costs of the hearing or the preparation for it.

[4] Next, the respondent refers to an argument which the applicant advanced but which I found unnecessary to determine, namely whether there was an issue estoppel which prevented the respondent from saying that the applicant was unable to work as a drill rig operator. That was an additional argument advanced against the validity of the assessment of Dr Parker. I did not explore its merit. But there is no reason for denying the applicant costs because he advanced two arguments, only one of which was necessary for his success in the case, at least where the other was not rejected as without an arguable basis.

[5] Next, the respondent makes a number of submissions upon the premise, it suggests, that the respondent participated in this case as something akin to an independent contradictor presenting a "reasonably arguable" case. It submits that it "answered" this application "in the capacity of a contradictor to ensure the efficacy of an occupational health and safety regime administered by the Commissioner for Mines Safety & Health".

[6] Part of this argument is that the respondent had not caused Dr Parker's error. That may be accepted for present purposes. However, the case had to be litigated because the respondent contested the applicant's claim that Dr Parker's report was ineffective. The costs would not have been incurred had the respondent conceded that it was ineffective. And the respondent's position was not that of an independent contradictor: it had its own interest in the question because it affected its right as the applicant's employer to terminate his employment.

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[2] *MBR v Parker* [2012] QCA 271.

[7] A related submission is that this case had "core public interest features" and that it was desirable to avoid awarding costs in this context because otherwise employers "will be dis-incentivised to contradict an Application of this sort". The submission referred to, amongst other cases, *Davis v City North Infrastructure Pty Ltd (No 2)*,[3] in which Applegarth J declined to order costs against an unsuccessful applicant who was seeking declarations of his entitlements under the *Right to Information Act* 2009 (Qld). In that case, Applegarth J noted that there was "an important question of statutory interpretation in which there were legitimate differences of opinion between the parties, and also between decision-makers".[4] The present case is quite the opposite. The law here had been settled by the Court of Appeal judgment to which I have referred. The contest here was about its application to the present facts. There was no wider public benefit from this litigation. To award costs against an employer which advanced an unmeritorious argument in support of an invalid step under legislation of this kind could hardly act as a disincentive to employers to promote public safety, as this employer now asserts.

[8] Lastly, there are arguments which seem directed only to the assessment of costs, an exercise which I am not asked to undertake. Nonetheless, the respondent says, it was "amenable to meeting the Applicant's request to move the matter to the Commercial List". I should note that it was not placed on that list: I heard it in the Civil List. The respondent says that it could have been heard in the Applications List. The respondent then submits that it was unnecessary for the applicant to engage senior counsel. It is also said that one rather than two affidavits from the applicant would have sufficed.

[9] There is not proper basis for criticising the matter for being in the Civil List rather than the Applications List. In hindsight, the ultimate absence of a factual dispute might suggest that it could have been heard in the Applications List. Notwithstanding this, the applicant should not be denied his costs because the case was more economically presented than may have been originally intended or anticipated. As for the applicant's use of senior counsel, the case turned on a short point but it had the potential to deprive the applicant of his livelihood. Mr Kent QC appeared without a junior counsel.

[10] In my conclusion, these very many arguments for the respondent do not, individually or collectively, provide a basis for departing from the ordinary rule that a successful party should have its costs. It will be ordered that the respondent pay to the applicant his costs of the proceeding.

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3 [2011] QSC 312.
4 [2011] QSC 312 at [11].