

# SUPREME COURT OF QUEENSLAND

CITATION: *Cornerstone Property & Development Pty Ltd v Suellen Properties Pty Ltd and anor* [2015] QSC 6

PARTIES: **CORNERSTONE PROPERTY & DEVELOPMENT  
PTY LTD**  
**ACN 150 870 867**  
(plaintiff)  
and  
**SUELLEN PROPERTIES PTY LTD**  
**ACN 154 671 691**  
(first defendant)  
and  
**SUELLEN BASSETT RUSHBROOK**  
(second defendant)

FILE NO: BS2849/13

DIVISION: Trial Division

PROCEEDING: Trial

DELIVERED ON: 5 February 2015

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Jackson J

ORDERS: **The order of the Court is that:**

**1. The plaintiff pay the first defendant's costs of the proceeding**

**2. The plaintiff pay the second defendant's costs of the proceeding.**

CATCHWORDS: PROCEDURE – COSTS – where an individual brought the proceeding in the company name under s 237 of the *Corporations Act 2001* (Cth) – where the order permitting the individual to do so also provided that he should be personally liable for costs of the proceeding – where no application has been made and where the individual has not been served in relation to the question of costs – whether it is appropriate that a costs order be made against him personally

COUNSEL: No submissions for the plaintiff  
Written submission of P Hastie QC for the first defendant  
Written submission for the second defendant

SOLICITORS: Lillas & Loel Lawyers for the plaintiff  
Hopgood Gamin for the first defendant  
The second defendant is unrepresented

**JACKSON J:**

- [1] On 28 October 2014, I gave judgment dismissing the plaintiff's claim against the first defendant and dismissing the plaintiff's claim against the second defendant.
- [2] I directed that written submissions be provided on the question of costs. The first defendant did so on 4 November 2014. The second defendant purported to do so by an agent (who does not have leave to appear on her behalf) on 4 November 2014. Despite an email from my Associate to the plaintiff's solicitors on 28 November 2014, requesting whether the plaintiff intended to provide any submissions, there has been no response on behalf of the plaintiff.
- [3] As to the first defendant, there is no reason advanced why costs should not follow the event. Accordingly, the plaintiff should be ordered to pay the first defendant's costs of the proceeding.
- [4] As to the second defendant, although she did not appear at the trial and was not represented by a legal practitioner from a point during the interlocutory processes before trial, she is likely to have incurred legal costs in this proceeding up to that point. There is also no reason advanced why costs should not follow the event. Accordingly, the plaintiff should be ordered to pay the second defendant's costs of the proceeding.
- [5] No special or other particular order as to costs was sought against the plaintiff.
- [6] However, by its written submission the first defendant applied for another order for costs against Luke Benjamin Chalmers. It was said that the order should "perhaps" be made in proceeding BS2516 of 2013. The second defendant copied those submissions.
- [7] The explanation for that application is that the plaintiff brought the present proceeding pursuant to an order made under s 237 of the *Corporations Act 2001* (Cth). Mr Chalmers applied for the order. He did so in his capacity as a member of the plaintiff. The order was made on 22 March 2013. Pursuant to the leave granted by the order, in effect, the proceeding was brought by the plaintiff on Mr Chalmers' instructions. Paragraph 2 of the order provided that Mr Chalmers be personally liable to pay costs orders made against the plaintiff.
- [8] However that may be, in the circumstances described above it is not appropriate that any further order be made as against him without an application for the order against him being made in appropriate form, by filing an application for the order, and by serving it upon him.
- [9] In the first place, proceeding BS2516 of 2013 is not before the Court. Second, neither the first defendant nor the second defendant has filed or served an application upon Mr Chalmers for an order that he pay their costs of the present proceeding. No direction was sought for the filing of such an application or for service of it upon Mr Chalmers when directions were given for the filing of written submissions as to costs. Third, by email from Lillas & Loel to my Associate dated 21 January 2015, those solicitors stated that a sequestration order has been made against Mr Chalmers and they no longer act for him.

[10] Accordingly, the only orders for costs which should be made at the present time are those against the plaintiff.