

SUPREME COURT OF QUEENSLAND

CITATION: *Sino Iron Pty Ltd & Anor v Palmer & Anor (No 4)* [2015]
QSC 189

PARTIES: **SINO IRON PTY LTD**
ACN 058 429 708
(first plaintiff)
and
KOREAN STEEL PTY LTD
ACN 058 429 600
(second plaintiff)
v
CLIVE FREDERICK PALMER
(first defendant)
and
COSMO DEVELOPMENTS PTY LTD
ACN 010 793 790
(second defendant)

FILE NO: BS6791/14

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 29 June 2015

DELIVERED AT: Brisbane

HEARING DATE: Written submissions as to costs

JUDGE: Jackson J

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

- 1. There is no order as to costs of the proceeding.**
- 2. There is no order as to costs of the application filed on 22 August 2014.**
- 3. There is no order as to costs of the application filed on 15 January 2015.**

PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – where judgment is given for the defendants after a trial on the plaintiffs' claim for accessory liability for breach of trust – where the plaintiffs succeeded on an application to strike out an unclean hands defence – where the plaintiffs succeeded on a pre-trial application to strike out the plaintiffs' claim - whether costs should follow the separate events of the proceeding and

applications

Uniform Civil Procedure Rules 1999 (Qld), r 681

Sino Iron Pty Ltd & Anor v Palmer & Anor [2014] QSC 259,
related

Sino Iron Pty Ltd & Anor v Palmer & Anor [2014] QSC 287,
related

Sino Iron Pty Ltd & Anor v Palmer & Anor (No 3) [2015]
QSC 94, related

COUNSEL: A Bell SC, M Thangerau SC and S Free for the
applicants/plaintiffs
S Couper QC and D Atkinson for the respondent/defendants

SOLICITORS: Allens Linklaters for the applicants/plaintiffs
Hopgood Ganim for the respondents/defendants

- [1] **JACKSON J:** On 4 May 2015 I made an order and gave judgment in this proceeding.¹ The order and judgment comprised two parts. First, an order striking out parts of the amended defence by which the defendants sought to raise an unclean hands defence. Second, dismissal of the plaintiffs’ claim after trial because they failed to prove that the Administrative Fund contributions were held on trust by Mineralogy Pty Ltd. I also dealt with other issues which were raised by the amended statement of claim and defence and ventilated at the trial. These reasons deal with the questions of costs which remain outstanding.
- [2] The order striking out paragraphs 50 to 100 of the amended defence was made on the second application of that kind in the proceeding (“second unclean hands strike-out application”). I made an order striking out the first iteration of the unclean hands defence on 26 November 2014.² On that occasion, I ordered the defendants to pay the plaintiffs’ costs of the application.
- [3] Before that, on 20 October 2014, I ordered that an application by the defendants for an order that the proceeding be dismissed or stayed as an abuse of process (“the dismissal application”) be dismissed.³ On that occasion I ordered that the costs of the application be reserved until 26 November 2014. Those costs remain to be dealt with.
- [4] I will refer to the dismissal application and the second unclean hands strike-out application together as “the applications”.
- [5] Under r 681 of the *Uniform Civil Procedure Rules 1999 (Qld)* (“UCPR”) there was a event on the dismissal of the claim, the orders made on the dismissal application and the order made on the second unclean hands strike-out application.
- [6] The plaintiffs submit that the appropriate order is that there be no order as to costs of the proceeding, including the applications. First, they submit that although the

¹ *Sino Iron Pty Ltd & Anor v Palmer & Anor (No 3)* [2015] QSC 94.

² *Sino Iron Pty Ltd & Anor v Palmer & Anor* [2014] QSC 287.

³ *Sino Iron Pty Ltd & Anor v Palmer & Anor* [2014] QSC 259.

defendants were successful on the trust issue that was an element of the plaintiffs' claim in the proceeding, they were unsuccessful on the other issues on the claim that were disposed of by *Sino Iron Pty Ltd & Anor v Palmer (No 3)*.⁴ Second, the plaintiffs submit that they were successful on second unclean hands strike-out application. Third, the plaintiffs submit that they were successful on the dismissal application. They rely on the fact that in terms of the time taken for legal argument, a separate day was spent on each of the applications and that two days were spent on the hearing of the issues raised at the trial of the proceeding.

- [7] The defendants did not tender any substantial evidence at the hearing of the trial of the proceeding. Most of that evidence was prepared and filed by the plaintiffs.
- [8] The plaintiffs' further submit that the separate issues determined after the trial of the proceeding could be treated as separate events for the purposes of UCPR r 681(1), so that unless the court orders otherwise, the defendants would have the costs of the trust issue but the plaintiffs would have the costs of the other issues.
- [9] The plaintiffs' ultimate submission is that it would be better to avoid the costs and delay of resolving the outcome of a number of countervailing costs orders. They submit that there would be costs and delay in the parties reaching agreement or assessing quantum in respect of separate costs orders.
- [10] The defendants submit that the primary event is the judgment dismissing the plaintiffs' claim. They submit that other issues raised by the defendants in defence of the claim, on which they were not successful, should not affect the making of an order for costs following that event.
- [11] The defendants' submissions do not recognise that their failure on the second unclean hands strike-out application was upon a separate application. They submit that some time was taken up in argument in relation to that defence, particularly on 29 January 2015, and characterise it as an issue which should not deprive the defendants of some of their costs merely because they have not been entirely successful. They submit that they were entirely successful, in that the claim in the proceeding was dismissed.
- [12] I do not agree. In the context of the way the proceeding was conducted, the second unclean hands strike-out application is a separate application. UCPR r 681(1) and 682(2) recognise that the costs of an application in a proceeding may be separately dealt with in the ordinary case. Similarly, the dismissal application was a separate application.
- [13] On the other hand, it is common that a judgment dismissing a claim, is treated as an event. In an ordinary case, an unsuccessful plaintiff who is ordered to pay the successful defendant's costs of a proceeding must pay the whole of those costs, notwithstanding that the successful defendant may have failed on some of the issues that were decided by the findings and reasons for judgment. Nevertheless, the court may make an order for costs on the footing that relevant issues are treated as separate events and thereby depart from the common approach.

⁴ *Sino Iron Pty Ltd & Anor v Palmer (No 3)* [2015] QSC 094.

- [14] The parties made some particular submissions as to whether an order that the plaintiffs pay the costs of the proceeding should be made in this case.
- [15] The plaintiffs submit that no order as to the costs of the proceeding should be made because the defendants failed on the matters of defence, apart from the trust issue. The defendants submit that an order that the plaintiffs pay the defendants costs of the proceeding should follow from the facts that the plaintiffs failed at the “first hurdle” on the trust issue. They also rely on the fact that Mineralogy had sought to reimburse the amount of \$12.16M dollars to the plaintiffs which was the primary relief claimed against the defendants.
- [16] In my view, it is unnecessary to decide whether a special order for costs of the proceeding, treating separate issues as the relevant events, should be made, leaving aside the appropriate orders to be made for the costs of the applications.
- [17] In my view, the appropriate order as to costs is the one for which the plaintiffs apply. That is to say there should be no order for costs of the proceeding including the applications, so as to avoid the costs and delay of countervailing costs orders of the proceeding and the applications.
- [18] I reach that conclusion because the court hearing, time and the complexity of the questions which were resolved by the orders made on the applications on the one hand and the judgment dismissing the claim in the proceeding, on the other hand, were comparable. As well, it seems to me that the plaintiffs are likely to have incurred substantially greater costs in the preparation of their affidavit evidence than did the defendants. The assessment that the countervailing costs orders that might be made would largely cancel one and another out is necessarily rough or broad brush. Nevertheless, in the circumstances of this case it seems to me that the risk of favouring the plaintiffs by such an order in comparison to the relative outcomes of separate orders for costs to follow each of the relevant events is low enough to justify an order that there be no order as to costs of the proceeding including the applications.