

SUPREME COURT OF QUEENSLAND

CITATION: *Joyce v Gold Coast Blaze Pty Ltd* [2012] QSC 32

PARTIES: **BRENDAN STEVEN JOYCE**
(plaintiff)
v
GOLD COAST BLAZE PTY LTD
ACN 122 467 289
(defendant)

FILE NO: 9548/09

DIVISION: Trial Division

PROCEEDING: Costs and interest

ORIGINATING COURT: Supreme Court, Brisbane

DELIVERED ON: 29 February 2012

DELIVERED AT: Brisbane

HEARING DATE: 3 October 2011 - 10 October 2011

JUDGE: Peter Lyons J

ORDER: **1. Judgment to include the sum of \$45,994.69 for interest up to the date of judgment.**

2. Defendant to pay the plaintiff's costs of the action, to include reserved costs, on the indemnity basis

CATCHWORDS: INTEREST – RECOVERABILITY OF INTEREST – IN GENERAL – where the Court found in earlier proceeding that the defendant wrongfully repudiated a contract of employment – where plaintiff was awarded \$310,316.48 – where leave was given for submissions to be made on interest on the judgement and costs – whether interest award should reflect progressive nature of loss

PROCEDURE – COSTS – INDEMNITY COSTS – where a settlement offer was made by the plaintiff prior to the trial – where offer not accepted and trial proceeded – where the judgment awarded was more than the settlement sum – whether discrepancy between date of repudiation pleaded in plaintiff's statement of claim and date presented in case at trial constitutes circumstances where it is appropriate to award costs assessed on a standard basis

Uniform Civil Procedure Rules 1999 (Qld) rule 360

Fail v Hutton [2003] QSC 291, Considered

COUNSEL: Plaintiff: DJ Pyle

Defendant: CC Wilson

SOLICITORS: Plaintiff: OMB Lawyers

Defendant: Reichman Lawyers

- [1] On 23 December 2011, reasons for judgment in this action were published, with the result that judgment was given for the plaintiff on his claim in the sum of \$310,316.48. The parties were given leave to make submissions in relation to interest on the judgment and costs. They did so, and these reasons deal with those issues.
- [2] The plaintiff's claim was for damages for the wrongful repudiation of a contract of employment for a term of four years, commencing on 1 July 2007. I determined that the defendant repudiated the contract at a meeting on 28 January 2009, acceptance of which by the plaintiff brought the contract to an end. The plaintiff was awarded damages for the period for which he was not paid, namely, from 1 July 2009 to 30 June 2011.
- [3] The plaintiff seeks his costs of the action from the defendant on the indemnity basis. On 8 September 2011, he made an offer to settle the action. If the offer had been accepted, he would have been paid the sum of \$190,000 inclusive of interest, together with his costs assessed on the standard basis. Relying on r 360 of the *Uniform Civil Procedure Rules 1999* (Qld) (*UCPR*) and *Fail v Hutton*,¹ he submits that the court must order the defendant to pay his costs on the indemnity basis, the defendant not showing that another order for costs is appropriate in the circumstances.
- [4] For the defendant, it is accepted that the offer is one to which r 360 applies. It submits, however, that the circumstances warrant the making of an order for the payment of the plaintiff's costs assessed on the standard basis. That is because the critical question was whether the defendant repudiated the contract, and although this was found to have occurred on 28 January 2009, the statement of claim alleged that it occurred on 18 February 2009.
- [5] In my view, this submission is entirely without merit. As was noted in the reasons for judgment², the case advanced at the trial was that the meeting occurred on 28 January 2009, and not 18 February 2009; and that happened without objection from the defendant. Indeed, the defence denied the allegations relating to the events pleaded in the statement of claim as occurring on 18 February 2009, not on the basis that the wrong date was alleged, but on the basis that the events which occurred were not as the plaintiff had pleaded them. The defendant led evidence of those events, no doubt in support of this part of its defence, as events occurring on 28 January 2009.
- [6] Further, on the second day of the hearing, the plaintiff provided particulars, in response to a request of 30 September 2011, of the pleaded repudiatory conduct of the defendant. The date on which the conduct occurred was identified in the

¹ [2003] QSC 291.

² At [23].

particulars as 28 January 2009. No objection was taken to the provision of those particulars, notwithstanding the date differed from the date in the statement of claim.

- [7] Since nothing else was advanced to avoid the operation of r 360, it follows that the plaintiff should have his costs of the action, assessed on the indemnity basis.
- [8] The plaintiff claims interest from 1 July 2009 until 23 December 2011 calculated at 10 per cent (simple), amounting to \$77,026.33. The defendant submits that either interest should be awarded for that period at five per cent; or for half the period claimed by the plaintiff at 10 per cent; resulting in an award for interest of \$35,019.21.
- [9] The plaintiff's loss was progressive, over a two year period. An appropriate calculation therefore is from the mid point of that period. This recognises, in effect, that the average length of time for which amounts which should have been paid periodically were outstanding is the period from 1 July 2010 until judgment. I would award interest, consistent with the submissions of both parties, at 10 per cent. On that basis, I calculate the interest to be \$45,994.69 (being \$31,031.64 from 1 July 2010 to 30 June 2011; and \$14,963.05 from 1 July 2011 to 23 December 2011).
- [10] Accordingly, I will order that the judgment include the sum of \$45,994.69 for interest up to the date of judgment; and that the defendant pay the plaintiff's costs of the action, to include (subject to any further submission) reserved costs, on the indemnity basis.