

SUPREME COURT OF QUEENSLAND

CITATION: *AMACSU v Ergon Energy Corporation Ltd & Ors* [2005] QCA 381

PARTIES: **AUSTRALIAN MUNICIPAL, ADMINISTRATIVE,
CLERICAL AND SERVICES UNION, CENTRAL AND
SOUTHERN QUEENSLAND CLERICAL AND
ADMINISTRATIVE BRANCH, UNION OF
EMPLOYEES (AMACSU)**

(appellant/respondent)

v

ERGON ENERGY CORPORATION LTD ACN 087 646
062

(first respondent/applicant)

ERGON ENERGY PTY LTD ACN 078 875 902

(second respondent/applicant)

**QUEENSLAND SERVICES INDUSTRIAL UNION OF
EMPLOYEES (QSU)**

(third respondent)

**THE ELECTRICAL TRADES UNION OF EMPLOYEES
OF AUSTRALIA, QUEENSLAND BRANCH (ETU)**

(fourth respondent)

**AUTOMOTIVE, METALS, ENGINEERING, PRINTING
AND KINDRED INDUSTRIES INDUSTRIAL UNION
OF EMPLOYEES, QUEENSLAND (AMWU)**

(fifth respondent)

**FEDERATED ENGINE DRIVERS' AND FIREMANS
ASSOCIATION OF AUSTRALASIA QUEENSLAND
BRANCH, UNION OF EMPLOYEES (FEDFA)**

(sixth respondent)

**THE FEDERATED CLERKS' UNION OF AUSTRALIA,
NORTH QUEENSLAND BRANCH, UNION OF
EMPLOYEES (FCUNQ)**

(seventh respondent)

**ASSOCIATION OF PROFESSIONAL ENGINEERS,
SCIENTISTS AND MANAGERS, AUSTRALIA,
QUEENSLAND BRANCH, UNION OF EMPLOYEES
(APESMA)**

(eighth respondent)

**ANTI-DISCRIMINATION COMMISSION OF
QUEENSLAND (ADCQ)**

(ninth respondent)

**THE HONOURABLE MR THOMAS BARTON
MINISTER FOR INDUSTRIAL RELATIONS**

(tenth respondent)

FILE NO/S: Appeal No 4829 of 2005

CA 140 of 2005

DIVISION: Court of Appeal

PROCEEDING: Application to Strike Out - Further Order

ORIGINATING COURT: Queensland Industrial Relations Commission

DELIVERED ON: Judgment delivered 23 September 2005
Further Order delivered 14 October 2005

DELIVERED AT: Brisbane

HEARING DATE: 12 September 2005

JUDGES: Jerrard and Keane JJA and Cullinane J
Judgment of the Court

ORDER: **The appellant is to pay the costs of the third, fourth, sixth, seventh and eighth respondents of the appeal, including the application determined on 23 September 2005, to be assessed on the standard basis**

CATCHWORDS: APPEAL AND NEW TRIAL - APPEAL – PRACTICE AND PROCEDURE - QUEENSLAND - POWERS OF COURT - COSTS - where several respondents to an appeal had successfully applied for an order that the appeal be stayed - where the other respondents to the appeal appeared in support of the application but were not formally joined as parties to the application - where only the respondents who appeared in support of the application sought costs from the appellant - whether costs should be awarded

Industrial Relations Act 1999 (Qld)
Uniform Civil Procedure Rules 1999 (Qld), r 689, r 749

Transport Workers' Union of Australia, Union of Employees (Queensland Branch) v Australian Document Exchange Pty Ltd [2000] QCA 142, Appeal No 1484 of 2000, 12 May 2000, distinguished

COUNSEL: A K Herbert for the first and second respondents/applicants
M D Hinson SC with D R Kent for the third, fourth, sixth, seventh and eighth respondents (to the appeal)
J E Murdoch SC for the tenth respondent (to the appeal)
M Bromberg SC for the appellant/respondent

SOLICITORS: McCullough Robertson for the first and second respondents/applicants
Hall Payne for the third, fourth, sixth, seventh and eighth respondents (to the appeal)
McCullough Robertson for the tenth respondent (to the appeal)
Slater & Gordon for the appellant/respondent

[1] **THE COURT:** On 23 September 2005, the Court ordered that AMACSU's appeal be permanently stayed on the ground that it is futile. At that time, the parties were

directed to exchange and deliver to the Court, within seven days, their submissions on the question of costs.

- [2] The Ergon parties indicated by letter dated 30 September 2005 to the Deputy Registrar of the Court of Appeal that they do not seek any order as to costs and, accordingly, do not intend to make any submissions in this regard. The third, fourth, sixth, seventh and eighth respondents have made a submission in which they seek an order for the payment by AMACSU of their costs of the entirety of the appeal proceedings.
- [3] The third, fourth, sixth, seventh and eighth respondents were necessary and proper parties to the appeal initiated by AMACSU.¹ While, as AMACSU points out, they did not become parties to the application brought by the Ergon respondents, they had a real interest in the outcome of that application and the submissions made on their behalf at the hearing of the Ergon respondents' application were of particular assistance to the Court.²
- [4] The application by the Ergon parties was heard on 12 September 2005. On 8 August 2005, the solicitors for the third, fourth, sixth, seventh and eighth respondents wrote to AMACSU's solicitors to formally advise AMACSU that they would be "appearing in support of the Ergon application and, in the event that your client resists that application, we will be seeking costs against your client". AMACSU was thus afforded a clear opportunity to withdraw its appeal. In pressing on, AMACSU was squarely on notice of the position as to costs on the part of these respondents.
- [5] AMACSU submits that this Court should proceed by reference to the practice, which is said to apply in "industrial litigation" under the *Industrial Relations Act* 1999 (Qld) ("the Act"), pursuant to which each party bears its own legal costs. But AMACSU's appeal was brought by AMACSU to this Court, and the disposition of the costs of proceedings in this Court falls to be determined by reference to the practice of this Court.
- [6] In this regard, the usual rule is that costs follow the event.³ The usual rule may not be applied where other relevant considerations point in a different direction; but the present is a case in which the position of the respondents in question was wholly vindicated.⁴ AMACSU's appeal was futile. In such a case, the unsuccessful party should expect to be ordered to pay the costs of the successful parties. That some of the successful parties are willing, for their own reasons, not to insist upon their costs, is no reason why other successful parties should be denied an order for their costs.
- [7] AMACSU also submitted that the involvement of senior and junior counsel for the respondents in question was not warranted. The resolution of that contention is a matter for those whose responsibility it is to assess the costs. It is not a reason for

¹ See r 749(1) of the *Uniform Civil Procedure Rules* 1999 (Qld).

² See *AMACSU v Ergon Energy Corporation Ltd & Ors* [2005] QCA 351; Appeal No 4829 of 2005, 23 September 2005 at [68].

³ *Uniform Civil Procedure Rules* 1999 (Qld), r 689(1).

⁴ Cf *Transport Workers' Union of Australia, Union of Employees (Queensland Branch) v Australian Document Exchange Pty Ltd* [2000] QCA 142; Appeal No 1484 of 2000, 12 May 2000 at [2].

this Court to decline to make an order for the recovery by these respondents of their costs.

- [8] The submission of the third, fourth, sixth, seventh and eighth respondents in relation to costs should be accepted.

Order

- [9] The appellant is ordered to pay the costs of the third, fourth, sixth, seventh and eighth respondents of the appeal, including the application determined on 23 September 2005, to be assessed on the standard basis.