

SUPREME COURT OF QUEENSLAND

CITATION: *Hammercall Pty Ltd v Gold Coast City Council & Anor*
[2009] QCA 233

PARTIES: **HAMMERCALL PTY LTD** ACN 002 663 587
(applicant)
v
GOLD COAST CITY COUNCIL
(first respondent)
STATE OF QUEENSLAND
(second respondent)

FILE NO/S: Appeal No 8381 of 2003
P & E Appeal No 12 of 2003
P & E Appeal No 477 of 2003

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application – Civil

ORIGINATING COURT: Planning and Environment Court at Brisbane

DELIVERED ON: 14 August 2009

DELIVERED AT: Brisbane

HEARING DATE: 16 June 2009

JUDGES: Keane and Muir JJA and Fryberg J
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application dismissed**

CATCHWORDS: INTEREST – RECOVERABILITY OF INTEREST –
AWARD OF INTEREST ON DEBTS AND SUMS
CERTAIN – OTHER MATTERS – where respondents
previously ordered to pay a specified part of the applicant's
costs of successful appeal – where certificate of assessment
issued by costs assessor – where applicant applied for order
pursuant to s 48(2)(b) of the *Supreme Court Act* 1995 (Qld)
that respondents pay interest on assessed sum from date costs
orders made until payment – where 21 day period
contemplated by s 48(2)(b) had not yet lapsed – whether
order for interest should be made

Supreme Court Act 1995 (Qld), s 48
Uniform Civil Procedure Rules 1999 (Qld), r 737

COUNSEL: A P Abaza (*sol*) for the applicant
G J Robinson for the respondents

SOLICITORS: Andrew P Abaza for the applicant
King & Company for the first respondent
Crown Law for the second respondent

- [1] **KEANE JA:** On 6 May 2005 this Court made orders disposing of the costs of the appeal to this Court by the present applicant from judgments of the Planning and Environment Court. Relevantly for present purposes this Court ordered that the respondents pay a specified part of the applicant's costs of the appeal.

- [2] On 25 March 2009, after much delay and many travails, due in part to legislative changes in the costs assessment regime in Queensland, the legal costs assessor engaged to determine the quantum of the costs recoverable by the applicant indicated to the parties his intention to assess the costs recoverable by the applicant at \$58,302.54 (of an amount claimed of \$114,951.75). At that time the assessor asked the applicant to provide a number of documents by way of proof of the payment of disbursements claimed by the applicant. The assessor also indicated his intention to proceed to assess the costs of the assessment itself.

- [3] On Monday 15 June 2009 the certificate of assessment contemplated by r 737 of the *Uniform Civil Procedure Rules 1999* (Qld) ("the UCPR") was issued by the assessor. The certificate fixed the costs recoverable by the applicant at \$64,790.89, which sum included the costs of the assessment itself.

- [4] On 13 May 2009 the applicant applied to this Court for an order pursuant to s 48(2)(b) of the *Supreme Court Act 1995* (Qld) ("the Act") that the respondents pay interest on the sum of \$58,302.54 from 6 May 2005 until the date of payment at the rate of 11 percent per annum compounding daily.

- [5] Section 48 of the Act provides as follows:
 - "Interest on debt under judgment or order"**
 - (1) Where judgment is given or an order is made by a court of record for the payment of money in a cause of action that arose after the commencement of the *Common Law Practice Act Amendment Act 1972*, interest shall, unless the court otherwise orders, be payable at the rate prescribed under a regulation from the date of the judgment or order on so much of the money as is from time to time unpaid.
 - (2) Notwithstanding anything contained in subsection (1)–
 - (a) where the court directs the entry of judgment for damages and the damages are paid within 21 days after the date of the direction–interest on the damages shall not be payable unless the court otherwise orders;
 - (b) where the court makes an order for the payment of costs and the costs are paid within 21 days after the ascertainment thereof by taxation or otherwise–interest on the costs shall not be payable unless the court otherwise orders."

- [6] It is to be emphasised that the applicant expressly eschewed reliance on s 48(1) of the Act.
- [7] It is readily apparent from the language of s 48(2)(b) of the Act that, until the lapse of 21 days after the ascertainment of the costs payable under the order of the court and the non-payment of the ascertained amount by the party liable, the occasion for the making of an order for the payment of interest has not arisen. This is the effect of the language of s 48(2)(b) of the Act. It is clear beyond any shadow of doubt.
- [8] Before this Court the applicant expressly accepted that the costs were only ascertained for the purposes of s 48(2)(b) when the assessor's certificate issued. There is, therefore, no occasion to consider whether the 21 day period contemplated by s 48(2)(b) began to run before 15 June 2009.
- [9] When the application was heard by this Court on 16 June 2009, counsel for the respondents informed the Court that it was his client's intention to pay the amount certified by the assessor within the 21 day period. Whether or not that occurs, it is clear that the occasion for the exercise of the discretion conferred by s 48(2)(b) has not yet arisen.
- [10] The application is clearly premature. It should be dismissed.
- [11] **MUIR JA:** I agree with the reasons and proposed order of Keane JA.
- [12] **FRYBERG J:** I agree with the reasons of Keane JA and the order his Honour proposes.