SUPREME COURT OF QUEENSLAND

CITATION:	*Hauff & Anor v Miller* [2013] QCA 70
PARTIES:	**TREVOR GEORGE HAUFF** (first appellant/cross-respondent) **IRENE CHRISTINE HAUFF** (second appellant/cross-respondent) **v** **ANNE MARIE MILLER** (respondent/cross-appellant)
FILE NO/S:	Appeal No 7354 of 2012 DC No 234 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal – Further Orders
ORIGINATING COURT:	District Court at Cairns
DELIVERED ON:	2 April 2013
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Chief Justice and Holmes JA and Dalton J Judgment of the Court
ORDER:	**That the costs referred to in paragraph 4 of the orders made on 15 March 2013 be assessed, as necessary, on the standard basis.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – POWERS OF THE COURT – COSTS – the appellants succeeded both at trial and on appeal – the Court of Appeal differed in its construction of the sales contract from that adopted by the primary Judge – there was no relevant offer from the appellants to compromise the appeal – whether costs should be assessed on the indemnity basis or on the standard basis – whether the respondent is entitled to an indemnity certificate under s 15 of the *Appeal Costs Fund Act* 1973 on the ground that the appeal has resolved an important question of law *Appeal Costs Fund Act* 1973 (Qld), s 15 *Re: Cooke* [1997] 1 Qd R 15, [1995] QSC 146, distinguished
COUNSEL:	No appearances in person; written submissions received
SOLICITORS:	Trevor Hauff Lawyers for the appellants/cross-respondents Robert Palethorpe Solicitor for the respondent/cross-appellant

[1] **THE COURT:** The appellants seek a direction that the costs to which they are entitled be assessed on the indemnity basis. The costs in question are the costs of the appeal and the cross appeal, in which the appellants succeeded.

[2] The appellants succeeded at the trial, but only in relation to the deposit monies totalling $13,000. The trial Judge allowed them indemnity costs in circumstances where they had before the trial offered to settle their claim for that amount.

[3] In seeking indemnity costs of the appeal, the appellants rely on that matter, and on suggested "misconduct that caused loss of time to the court and other parties", "persistence in a hopeless case" and "undue promulgation of a case by groundless contentions".

[4] We accept that the respondent's claim on the appeal to have satisfied her obligation under the subject to finance clause, which the primary Judge had rejected, where she did not even apply to the nominated financier, was certainly most unpromising if not "hopeless".

[5] But the appellants' subsequent success in the appeal depended on what is the proper construction of provisions of the standard form contract, in which the Court of Appeal differed from the approach taken by the primary Judge. While obviously convinced of the correctness of the construction which led to the additional declaration added on appeal, we are not satisfied that the respondent's position in that regard was unarguable or hopeless. The other criticisms of the respondent's approach relate substantially to the way she conducted the trial. The appellants' present claim is not supported by a relevant offer to compromise the appeal (the $300,000 costs and damages offer of 6 February 2013 does not warrant that description).

[6] We are not satisfied that the circumstances warrant an order that the subject costs be assessed on the indemnity basis.

[7] The respondent refers to costs of raising the issue of compliance with the *Property Agents and Motor Dealers Act* 2009: whether or not those costs are allowed is a matter for the assessor.

[8] There will therefore be an order that the costs referred to in paragraph 4 of the orders made on 15 March 2013 be assessed, as necessary, on the standard basis.

[9] The respondent seeks an indemnity certificate under s 15 of the *Appeal Costs Fund Act* 1973 on the ground that the appeal has resolved an important question of law. A certificate should not be granted because the respondent contended for, and then on appeal sought to sustain, the construction adopted at first instance (cf. *Re: Cooke* [1997] 1 Qd R 15, 23).