

SUPREME COURT OF QUEENSLAND

CITATION: *CMF Projects Pty Ltd v Riggall & Anor* [2014] QCA 358

PARTIES: **CMF PROJECTS PTY LTD**
ACN 114 539 212
(appellant)
v
BRIAN NOEL MANSON RIGGALL
(first respondent)
JANE REIMAN RIGGALL
(second respondent)

FILE NO/S: Appeal No 4459 of 2014
DC No 4085 of 2013

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal - Further Order

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 19 December 2014

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Holmes, Gotterson and Morrison JJA
Judgment of the Court

ORDER: **The respondents be granted an indemnity certificate pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973 (Qld)* in respect of the costs of the appeal.**

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the respondents unsuccessfully defended the appeal – where there had been no prior ruling from this Court regarding the interpretation of s 55 of the *Domestic Building Contracts Act 2000 (Qld)* – whether the respondents should be granted an indemnity certificate
Appeal Costs Fund Act 1973 (Qld), s 15(1)

COUNSEL: No appearance for the appellant
No appearance for the respondents, the respondents' submissions were heard on the papers

SOLICITORS: No appearance for the appellant
HWL Ebsworth for the respondents

- [1] **THE COURT:** The respondents, who unsuccessfully defended this appeal, have applied for an indemnity certificate pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973* (Qld) in respect of the appeal. The appeal succeeded on a question of law, namely, how s 55 of the *Domestic Building Contracts Act 2000* (Qld) is to be interpreted. The jurisdiction under s 15(1)(a) is thereby enlivened.
- [2] The respondents were justified in defending the appeal. The interpretation of s 55 which they advanced at first instance and on appeal was fairly arguable. It had found support in several decisions of courts in Queensland; but it was not adopted by this Court. This appeal was the first occasion on which this Court had ruled upon the interpretation of the provision. The Court's decision will have significance beyond the factual framework of this case with regard to the extent of jurisdiction of courts in Queensland in domestic building disputes.
- [3] These circumstances in combination present a persuasive case for a favourable exercise of the Court's discretion under s 15(1)(a). Accordingly, the order of the Court is:
1. The respondents be granted an indemnity certificate pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973* (Qld) in respect of the costs of the appeal.