SUPREME COURT OF QUEENSLAND

CITATION:	*Principal Properties Pty Ltd v Brisbane Broncos Leagues Club Limited* [2018] QCA 91
PARTIES:	**PRINCIPAL PROPERTIES PTY LTD** ACN 072 279 675 (appellant) **v** **BRISBANE BRONCOS LEAGUES CLUB LIMITED** ACN 101 798 679 (respondent)
FILE NO/S:	Appeal No 12619 of 2016 SC No 6489 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal – Further Orders
ORIGINATING COURT:	Supreme Court at Brisbane – [2017] 2 Qd R 128; [2016] QSC 252 (Jackson J)
DELIVERED ON:	18 May 2018
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Philippides and McMurdo JJA and Boddice J
ORDERS:	**1. The respondent pay the appellant's costs of the proceeding in the Trial Division, including reserved costs, to be assessed as if the proceeding had been started in the District Court.** **2. The respondent pay the appellant's costs of the appeal.** **3. The respondent be granted a certificate under s 15(1) of the *Appeal Costs Fund Act* 1973 (Qld).**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the Court allowed the appeal against the decision of the primary judge and ordered that the appellant be awarded contractual damages of $250,000 together with interest – where the parties provided written submissions as to the orders which should be made for the costs of the proceeding in the trial division and of the appeal – where the parties agreed that the appellant should be awarded its costs at first instance – where the appellant was awarded only one third of the District Court's jurisdictional limit in contractual damages – whether the appellant's costs at first instance should be assessed as if the proceeding had been started in the District Court, pursuant to r 697(4) of the *Uniform Civil Procedure*

Rules 1999 (Qld)

APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the appeal was allowed, but the appellant was unsuccessful in many of its arguments – where much of the time involved in the oral argument before the Court was intended to displace the trial judge's assessment of the appellant's loss and damage – whether the appellant should be awarded only one half of its costs of the appeal, assessed as if the proceeding had been started in the District Court

APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT AN INDEMNITY CERTIFICATE – WHEN GRANTED – where the Court allowed the appeal against the decision of the primary judge and ordered the respondent to pay the appellant's costs of the appeal – where the unsuccessful respondent seeks an indemnity certificate – where the appeal succeeded on a question of law, for which there was no specific authority and where both sides of the debate were fairly arguable – whether an indemnity certificate should be granted

Appeal Costs Fund Act 1973 (Qld), s 15
District Court of Queensland Act 1967 (Qld), s 68(1)(b)(iii), s 68(3)(b)
Uniform Civil Procedure Rules 1999 (Qld), r 697(4)

Lauchlan v Hartley [1980] Qd R 149, applied
Principal Properties Pty Ltd v Brisbane Broncos Leagues Club Limited [2017] QCA 254, related

COUNSEL: S L Doyle QC, with S S Monks, for the appellant
G A Thompson QC, with D Skennar, for the respondent

SOLICITORS: Shine Lawyers for the appellant
McCullough Robertson for the respondent

[1] **PHILIPPIDES JA:** I agree with the reasons of McMurdo JA and with the orders proposed by his Honour.

[2] **McMURDO JA:** This judgment deals with questions about costs, arising out of this Court's judgment last year, in which the appeal was allowed and the appellant was awarded contractual damages of $250,000 together with interest.[1] There are three questions, namely: (1) What order should be made for the costs of the proceeding at first instance? (2) What order should be made for the costs of the appeal? (3) Should the respondent be granted a certificate under s 15 of the *Appeal Costs Fund Act* 1973 (Qld)?

[3] On the first question, the appellant submits that it should have an order for costs, including reserved costs, to be assessed on the standard basis for a proceeding in the

1 *Principal Properties Pty Ltd v Brisbane Broncos Leagues Club Limited* [2017] QCA 254.

Trial Division. The respondent agrees that the appellant should be awarded its costs at first instance, but assessed on the District Court scale, by which it means that the costs should be assessed as if the proceeding had been started and concluded in that court.

[4] By r 697(4) of the *Uniform Civil Procedure Rules* 1999, where the only relief obtained by a plaintiff in a proceeding in the Supreme Court is relief that, when the proceeding began, could have been given by the District Court, the costs the plaintiff may recover must be assessed as if the proceeding had been started in the District Court, unless the court orders otherwise.

[5] The respondent submits that there is no reason for the court to order otherwise. Remarkably, the appellant's submissions do not refer to r 697. But they do point out that from the commencement of the proceeding in July 2012 until March 2014, the appellant sought an order for specific performance of the contract, where the value of the land, measured by the contract price, was $1,100,000. While referring to s 68(1)(b)(iii) of the *District Court of Queensland Act* 1967 (Qld), that submission overlooks s 68(3)(b), which provides that the value of land for this purpose shall be according to the most recent valuation, current at the time of the institution of the proceedings, made under the *Land Valuation Act* 2010 (Qld), or if there is no such valuation, the current market value at that time exclusive of improvements. The appellant's submissions do not identify evidence by which it may be concluded that the value according to s 68(3)(b) was not within the monetary limit of the District Court.

[6] The appellant was awarded only one third of the District Court's jurisdictional limit. There was no single correct figure which represented the appellant's loss, but on the findings which were ultimately made, the appellant ought not to have expected to recover a loss of more than that monetary limit. In my view, r 697 should be applied and the appellant should have its costs of its proceeding in the Trial Division, but assessed as if the proceeding had been in the District Court.

[7] On the second question, the appellant seeks its costs of the appeal. The respondent submits that the appellant should be awarded only one half of its costs and that they be assessed "on the District Court scale". The respondent argues that although the appeal was allowed, the appellant was unsuccessful in many of its arguments. It is said, with justification, that much of the time involved in the oral argument before this Court was directed to displacing the trial judge's assessment of the loss and damage at $330,000. (If, contrary to the judge's conclusion, the law allowed for the recovery of damages for a lost chance where the appellant would have made a loss.)

[8] Although the appellant was not successful to nearly the extent for which it argued, a costs order must recognise that the appeal was successful and resulted in a substantial, rather than a nominal award of damages. As a successful party, the appellant should not be denied its costs of the appeal because not every argument was accepted. There is no reason for this Court to order that the costs of the appeal be modified in some way to recognise that the case should have been brought in the District Court. The order should be that the respondent pay the appellant's costs of the appeal.

[9] On the third question, the appeal succeeded on a question of law, for which there was no specific authority and where both sides of the debate were fairly arguable.[2] In my view this is an appropriate case for the grant of a certificate under s 15(1).

[10] The appellant also seeks orders for the return of a bank undertaking, and for the payment of monies which had been paid into court by the appellant as security for costs. The respondent has said nothing about those orders. If, as seems likely, the orders would not be opposed, the parties could file a consent order accordingly.

[11] I would order as follows:

1. The respondent pay the appellant's costs of the proceeding in the Trial Division, including reserved costs, to be assessed as if the proceeding had been started in the District Court;

2. The respondent pay the appellant's costs of the appeal;

3. The respondent be granted a certificate under s 15(1) of the *Appeal Costs Fund Act* 1973 (Qld).

[12] **BODDICE J:** I agree with the reasons and orders of McMurdo JA.

---

2 *Lauchlan v Hartley* [1980] Qd R 149 at 151.