SUPREME COURT OF QUEENSLAND

CITATION:	*Lastavec & Anor v Effective Security Pty Ltd & Anor [No 2]* [2023] QCA 12
PARTIES:	**PAUL LASTAVEC** (first applicant/first appellant) **MARIA TOPIC** (second applicant/second appellant) **v** **EFFECTIVE SECURITY PTY LTD** ACN 079 315 549 (first respondent) **STEVEN FRANCIS LASTAVEC** (second respondent)
FILE NO/S:	Appeal No 276 of 2022 DC No 13 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave s 118 DCA (Civil) – Further Orders
ORIGINATING COURT:	District Court at Brisbane – [2021] QDC 314 (Richards DCJ)
DELIVERED ON:	10 February 2023
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGES:	Morrison and McMurdo JJA and Boddice J
ORDERS:	**1. The order made in the District Court on 27 May 2022 be set aside.** **2. The respondents pay the applicants' costs of the proceeding in the District Court as and from 29 April 2020, to be assessed on the standard basis.** **3. Otherwise there be no order for the costs of the proceeding in the District Court.** **4. The respondents pay the appellants' costs of the appeal and the application for leave to cross-appeal, to be assessed on the standard basis, save for the costs of the application determined on 10 November 2022.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – POWERS OF COURT – COSTS – where the appellants (the applicants at first instance) were unsuccessful in the District Court – where the District Court proceeding was commenced by originating application in 2010 – where it was not until 2020 that the relief claimed was

broadened – where, had the claim not been broadened, the judgment at first instance in favour of the respondents would have been correct – where the applicants seek costs on an indemnity basis – whether indemnity costs should be awarded – whether the applicants should have their costs in the District Court from the time of filing the originating application or from the time the claim was broadened – where the appellants were successful on appeal – where the appellants' case on appeal was unnecessarily broad – where the appellants seek their costs of the appeal on an indemnity basis – whether indemnity costs should be awarded – how the costs should be apportioned

COUNSEL: L V Amerena for the applicants/appellants
A I O'Brien and M A Windsor for the respondents

SOLICITORS: Robinson Locke Litigation Lawyers for the applicants/appellants
Small Myers Hughes for the respondents

[1] **THE COURT:** This judgment deals with unresolved questions about the costs of the proceeding in the District Court, as well as the proceeding in this Court which was determined by judgments delivered in September and November last year.[1]

[2] This litigation was commenced by an originating application filed in the District Court on 14 May 2010. The relief then sought related to the land described in the judgments as the Stowe Road land. There was a claim for a declaration that a partnership existed between the parties in relation to that property. The applicants (ultimately the appellants in this Court) also sought further orders for the winding up of that partnership, including an order that the parties agree on a forensic accountant to undertake a financial accounting of the partnership business.

[3] Nearly 10 years later, on 29 April 2020, a further amended originating application was filed, the applicants for the first time seeking relief in respect of the entire partnership between the parties, said to have commenced in 2006 and to have been "dissolved" in March 2010. They sought an order that the respondents account to them in the sum of $345,633 in respect of that partnership.

[4] The proceeding was heard in the District Court over two days in October 2020 and a judgment was delivered on 10 June 2021, described in this Court's judgment as the preliminary judgment. The judge ordered that the parties provide written submissions as to the final orders and costs within seven days, and adjourned the case to 21 June 2021. However, through no fault of the judge, final orders were not made until 10 December 2021, and that was the judgment which was the subject of this appeal. In that judgment, the judge referred to something of a change of course by the parties. In particular she observed that it was only after the preliminary judgment that the applicants made any submissions by reference to s 47 of the *Partnership Act 1891* (Qld).

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1 *Lastavec & Anor v Effective Security Pty Ltd & Anor* [2022] QCA 171 and *Lastavec & Anor v Effective Security Pty Ltd & Anor* [2022] QCA 218.

[5] In the final judgment, the judge made orders for further submissions on the question of the costs of the proceeding. By an order made on 27 May 2022, the applicants were ordered to pay the respondents' costs in the sum of $50,000. The basis for that order was that the respondents had succeeded in the proceeding, having obtained a money judgment in their favour.

[6] This Court has held that it was the appellants who should have succeeded and ultimately ordered the respondents to pay the sum of $129,658.51.

[7] Consequently, the order of the District Court made on 27 May 2022 must be set aside. The appellants submit that the respondents should pay the entirety of their costs in the District Court and on an indemnity basis.[2] The respondents submit that there should be no order as to costs up to 28 April 2020 but that they might be ordered to pay the applicants' costs in the District Court from that date, on the standard basis.

[8] The respondents' argument emphasised the fact that it was not until 29 April 2020 that the originating application was amended to claim relief in respect of the entirety of the partnership. Until then, the proceeding was limited to a partnership said to have involved only the Stowe Road project. That project made a loss and had it not been necessary to consider the profits on the Treetops project, the judgment given in favour of the respondents would have been correct.

[9] The appellants say that as the successful party, they should have their costs for the entire proceeding. Their submissions do not answer the respondents' point as to when the relief claimed was broadened in 2020.

[10] The appellants submit that for many years they were refused a proper accounting of the affairs of the partnership, during which they had to spend substantial amounts in the proceedings. Further, they say that the respondents' conduct "bordered on contemptuous" in response to an order made by a judge in 2015 that a financial account of the partnership be undertaken. However, the reasons for that order show that even at that stage, the applicants' claim was limited to the Stowe Road project.[3]

[11] The respondents' argument is persuasive. It was incumbent upon the appellants to seek relief which would bring into account, in their favour, the profits of the Treetop Project. Absent that element of their case, their proceeding would have been unsuccessful. Consequently, they should have their costs only from when they did amend their proceeding. The respondents' conduct is not demonstrated to have been of the kind which might warrant an order for indemnity costs.

[12] The appellants seek their costs of the appeal (and again on an indemnity basis). The respondents concede that they should pay the appellants' costs of the application for leave to cross-appeal, and that they should pay 80 per cent of the costs of the appeal. In essence, the basis for that discount is essentially that the appellants' case on appeal was unnecessarily broad, encompassing many arguments which were unsuccessful, and that it was not until an amended notice of appeal was filed that a ground was raised which resembled the basis upon which the appeal was allowed.

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2 An alternative argument was that they be paid on the indemnity basis from the date of a certain offer, which was slightly less than the amount originally ordered by this Court before the judgment was corrected under the slip rule. The appellants' submissions were made before that correction.

3 *Lastavec & Anor v Effective Security Pty Ltd & Anor* [2015] QDC 22.

They are valid criticisms, but it is well established that a successful party need not prevail on every argument in order to be awarded all of its costs. The arguments, although extensive, were able to be completed within the day allocated for the hearing in this Court. The appellants should have their costs of their appeal and for the cross-appeal, with no discount as suggested by the respondents. There is no justification for ordering those costs on an indemnity basis.

[13] The successful application by the respondents to amend the judgment sum is already the subject of an order for costs in favour of the respondents, which will not be disturbed by these orders.

[14] We would order as follows:

1. The order made in the District Court on 27 May 2022 be set aside.

2. The respondents pay the applicants' costs of the proceeding in the District Court as and from 29 April 2020, to be assessed on the standard basis.

3. Otherwise there be no order for the costs of the proceeding in the District Court.

4. The respondents pay the appellants' costs of the appeal and the application for leave to cross-appeal, to be assessed on the standard basis, save for the costs of the application determined on 10 November 2022.