DISTRICT COURT OF QUEENSLAND

CITATION:	***Stevenson v Landon Pty Ltd & Anor*** **[2005] QDC 082**
PARTIES:	**CHRISTINA MARIE STEVENSON** Applicant and **LANDON PTY LTD (ACN 009 978 036)** First Respondent and **RUSSELL CROSS, NARELLE CROSS, DARREN PATON and MELISSA PATON** Second Respondents
FILE NO:	659/02
PROCEEDING:	Application for costs
ORIGINATING COURT:	District Court Southport
DELIVERED ON:	22 April 2005
DELIVERED AT:	Southport
HEARING DATE:	Written submissions received 30 March and 8 April 2005
JUDGE:	Newton DCJ
ORDER:	**Plaintiff to pay costs of and incidental to the application to have the matter referred to mediation**
CATCHWORDS:	PRACTICE – COSTS – Application to have matter referred to mediation dismissed – whether costs should follow event or whether costs should be costs in the cause
COUNSEL:	Mr S R Connor – applicant Mr C S Harding - respondents
SOLICITORS:	Adamson Bernays Kyle & Jones – applicant McCabe Terrill – respondents

[1] The applicant/plaintiff unsuccessfully sought an order pursuant to r 320 of the *Uniform Civil Procedure Rules* 1999, referring her claim for damages for personal injuries to mediation. The application was heard on 31 January 2005 and dismissed on 4 February 2005, at which time I indicated that I would, if required, receive submissions with respect to costs in due course. Written submissions from the parties were received on 30 March 2005 (from the unsuccessful plaintiff/applicant) and on 8 April 2005 (from the first defendant/respondent and second defendants/respondents).

[2] The plaintiff/applicant has raised a number of matters that, the defendants/respondents submit, were not the subject of evidence before the Court in relation to the hearing of the application itself. The gist of the contention on behalf of the plaintiff/applicant is contained in paragraph 6 of the submissions which states:

> "As the parties had been unable to enter into any reasonable settlement negotiations at the compulsory settlement conference and due to the fact that the quantum of the Plaintiff's claim was minimal with liability a significant risk, it was a quicker and cheaper alternative to attempt to resolve the matter through negotiation rather than trial. Accordingly, an attempt was made to have the matter proceed to mediation."

The plaintiff submits that the costs of the application be costs in the cause.

[3] The defendants/respondents submit that, given that the plaintiff's application was wholly unsuccessful, costs should follow the event. Counsel for the defendants/respondents points out that the effect of such an order as that sought by the plaintiff would be that if the plaintiff was successful at trial, the defendants

would be responsible for her costs of the application heard on 31 January, despite the fact that the defendants successfully resisted the orders sought by the plaintiff.

[4] The submissions made on behalf of the plaintiff/applicant no doubt reflect the tactical reasons behind the decision to make the application to have her case referred to mediation. However, as the substance of the application was decided adversely to the plaintiff/applicant, such reasons provide insufficient basis to depart from the general rule which would see costs follow the event.

[5] In the circumstances, in my opinion, the defendants/respondents are entitled to their costs of and incidental to the application to be assessed. I order that the plaintiff/applicant is to pay the costs of and incidental to the application, to be assessed.

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