DISTRICT COURT OF QUEENSLAND

CITATION:	*Connolly v Queensland Rugby Union Ltd (No. 2)* [2017] QDC 251
PARTIES:	**JOHN CONNOLLY** **(plaintiff)** **v** **QUEENSLAND RUGBY UNION LTD** **(defendant)**
FILE NO/S:	3905/15
DIVISION:	Civil
PROCEEDING:	Trial – interest and costs
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	13 October, 2017
DELIVERED AT:	Brisbane
HEARING DATE:	8 – 9 August, 2017 & written submissions by the parties on interest and costs
JUDGE:	Dearden DCJ
ORDER:	**1. The defendant Queensland Rugby Union Ltd pay the plaintiff John Connolly the sum of $13,489.25 interest to the date of judgment (1 September 2017).** **2. The defendant pay the plaintiff's costs of and incidental to the proceedings to be assessed on an indemnity basis on the District Court scale.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – OTHER MATTERS – where there were multiple versions of the statement of claim – where the defendant rejected the plaintiff's offers to settle – whether the defendant's failure to accept the offer was influenced by the then version of the statement of claim – whether the plaintiff's success was based upon subsequent amendments to the statement of claim PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – INDEMNITY COSTS – RELEVANT CONSIDERATIONS GENERALLY – where the judgment was no less favourable to the plaintiff than the offer made by the plaintiff to the defendant – where there was an element of compromise – whether the offer constitutes an

element of compromise entitling the plaintiff to indemnity costs under r. 360 of the *Uniform Civil Procedure Rules*

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – SCALE OF COSTS – APPLICABLE SCALE – where the judgment sum is for $150,000 – whether the appropriate scale upon which the plaintiff's costs ought to be awarded is the Magistrates Court or District Court scale

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – OTHER MATTERS – where there were amendments to the statement of claim – whether the defendant is entitled to an award for costs in its favour in respect of amendments to the statement of claim

LEGISLATION: *District Court of Queensland Act 1967*, s. 68

Magistrates Court Act 1921, ss. 2, 4

Uniform Civil Procedure Rules 1999, rr. 360, 692, 697

CASES: *Campbell v Turner* [2007] QSC 362

Castro v Hillery [2003] 1 Qd R 651

Collins v Carey & Anor [2002] QSC 417

Connolly v Queensland Rugby Union Ltd [2017] QDC 221

GEJ & MA Geldard Pty Ltd v Mobbs & Ors [2011] QSC 297

JLG Industries Inc v Teetree Pty Ltd [2002] QDC 31

Jones v Millward [2005] 1 Qd R 498

Michael Vincent Baker Superannuation Fund Pty Ltd v Aurizon Operations Limited (No 2) [2017] QSC 63

Ross v Suncorp Metway Insurance Ltd [2002] QCA 93

COUNSEL: P Hackett for the plaintiff

P Hastie QC for the defendant

SOLICITORS: Carman Lawyers for the plaintiff

McInnes Wilson Lawyers for the defendant

Introduction

[1] The substantive judgment in this matter was delivered on 1 September 2017[1] and, by agreement, the parties each provided written submissions on the outstanding issues of interests and costs.

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1 *Connolly v Queensland Rugby Union Ltd* [2017] QDC 221.

Interest

[2] The parties agreed that the plaintiff is entitled to interest to the date of judgment (1 September 2017), fixed at $13,489.25.

Costs

[3] The plaintiff's outline of submissions on costs identifies four issues requiring determination, and I adopt (gratefully) the plaintiff's identification of those issues, in these terms:-

> "(a) whether the defendant's failure to accept the offer[2] was influenced by the then version of the statement of claim and whether the plaintiff's success was based upon subsequent amendments to the statement of claim (first issue).
>
> (b) whether the offer constitutes an element of compromise entitling the plaintiff to indemnity costs under r. 360 of the *Uniform Civil Procedure Rules* (UCPR) (second issue).
>
> (c) the appropriate scale upon which the plaintiff's costs ought to be awarded (third issue).
>
> (d) whether the defendant is entitled to an award for costs in its favour in respect of amendments to the statement of claim (fourth issue)." (Citations deleted).[3]

First issue

[4] The defendant asserts that the plaintiff succeeded on the basis of the facts alleged in its further amended statement of claim filed on 3 March 2017 which alleged an oral contract[4] and (conversely) that the signed QRU employment contract was not binding,[5] and that this was the basis on which the court found that the employment contract came to an end. It is further submitted that similar considerations applied to the first QRU contract agreement[6] while the second QRU contractor agreement was never executed.[7]

[5] The defendant's submission is that the case advanced in the further amended statement of claim filed 3 March 2017 is quite different to the cases advanced by the

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2 The plaintiff, on 2 January 2017, made an offer to settle under Part 5 of Chapter 9 of the *Uniform Civil Procedure Rules* 1999 to settle the proceedings for the sum of $150,000 plus costs.
3 Plaintiff's outline on costs, para 2(a) – (d).
4 Paras 5 – 7.
5 Paras 11A – 11AE.
6 Para 11CA – further amended statement of claim.
7 Para 11BA – further amended statement of claim.

statement of claim (which sought to rely on an oral contract and the QRU employment contract); and the amended statement of claim (which proceeded on the basis of the oral contract, the QRU employment contract, and the first and second QRU contractor agreements).

[6] The defendant then argues that the plaintiff's success arose from establishing an oral contract, consistent only with the further amended statement of claim[8] and such a substantial change in the case after an offer to settle is a good reason for refusing indemnity costs.[9]

[7] In reply, the plaintiff submits that all versions of the statement of claim relied on a case that the plaintiff's retainer was oral; that the term of engagement was "to the end of the 2016 Super Rugby season"; and that the defendant had repudiated the contract by terminating the plaintiff's employment prior to the expiry of the term.

[8] The plaintiff then argues that the various amendments to the statement of claim addressed issues raised by the defendant in its pleadings concerning the subsequent written contracts provided to the plaintiff.

[9] The plaintiff then submits that a further settlement offer by the defendant at a lower figure made on 20 July 2017, after all amendments had been made to the statement of claim, was also rejected by the defendant, and argues that the rejection by the defendant of this subsequent lower offer indicated that the amendments to the statement of claim played no part in the defendant's rejection of the offer on 2 January 2017 and the second offer on 20 July 2017.

[10] In those circumstances, the plaintiff submits that the defendant was not influenced by the relevant version of the statement of claim at the time the offer was rejected.

[11] The starting point is that, pursuant to UCPR r. 360:

> "**Costs if offer by plaintiff**
>
> (1) If—
>
> (a) the plaintiff makes an offer that is not accepted by the defendant and the plaintiff obtains an order no less favourable than the offer; and

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8 Para 13 – further amended statement of claim.

9 *Castro v Hillery* [2002] QCA 359; [2003] 1 Qd R 651, 663 – 5; followed in *GEJ & MA Geldard Pty Ltd v Mobbs & Ors* [2011] QSC 297, and also *Collins v Carey & Anor* [2002] QSC 417.

> (b) the court is satisfied that the plaintiff was at all material times willing and able to carry out what was proposed in the offer;
>
> the court must order the defendant to pay the plaintiff's costs calculated on the indemnity basis unless the defendant shows another order for costs is appropriate in the circumstances.
>
> (2) If the plaintiff makes more than 1 offer satisfying subrule (1), the first of those offers is taken to be the only offer for this rule."

[12] With respect to the first issue, I am satisfied that the foundation of the plaintiff's case was, on all versions of the statement of claim, that there was an oral contract, for a term "to the end of the 2016 Super Rugby season" and this contract was repudiated by termination prior to the expiry of the term.

[13] In those circumstances, the core of the plaintiff's case (although it may have changed through subsequent iterations of the amended statement of claim), was always based on the oral contract, which in my judgment I accepted was formed between Mr McCall, on behalf of the defendant, and the plaintiff.

[14] I accept the submission of the plaintiff that the first issue has not been established by the defendant, and would not be a basis on which to refuse an order for indemnity costs.

Second issue

[15] It is common ground between the defendant and the plaintiff that the offer of 2 January, 2017, offers to forgo interest, and therefore, contains an element of compromise sufficient to satisfy UCPR r. 360.[10]

[16] The defendant, however, argues that the compromise was so slight, that this is not a proper case for the exercise of the discretion to award indemnity costs.[11]

[17] With respect, the costs decision in *Ross v Suncorp Metway Insurance Ltd* was based on the contemporaneous service of the offer with the claim and statement of claim, with many of the medical reports not generated until after the offer was made.[12] That contrasts with the decision in this case, where the key issue was my finding in

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10 *Jones v Millward* [2005] QCA 76; [2005] 1 Qd R 498; *JLG Industries Inc v Teetree Pty Ltd* [2002] QDC 31.

11 *Ross v Suncorp Metway Insurance Ltd* [2002] QCA 93.

12 *Ross v Suncorp Metway Insurance Ltd* [2002] QCA 93, para 29.

respect of an oral contract between Mr McCall, on behalf of the defendant, and the plaintiff.

[18] I conclude that, given the judgment was "no less favourable to the plaintiff than the offer made by the plaintiff to the defendant"[13]; that, having offered to forego interest, there was an element of compromise (albeit slight), which was sufficient in the circumstances,[14] and that the case the defendant had to assess was sufficiently identified as at 2 January, 2017. Accordingly, the second issue is not a basis on which to refuse to exercise the discretion to award indemnity costs.

Third issue

[19] The award of $150,000 is the limit of the Magistrates Court jurisdiction[15] and UCPR r. 697 relevantly provides:

> "**Costs of proceeding in wrong court**
>
> (1) Subrule (2) applies if the relief obtained by a plaintiff in a proceeding in the Supreme Court or District Court is a judgment that, when the proceeding began, could have been given in a Magistrates Court.
>
> (2) The costs the plaintiff may recover must be assessed as if the proceeding had been started in the Magistrates Court, unless the court orders otherwise."

[20] Although the sum of $150,000 is the upper limit of the prescribed limit of the Magistrates Courts monetary jurisdiction,[16] it is also within the civil jurisdiction of the District Court.[17]

[21] It is accepted by both the plaintiff and the defendant that the award of interest should be disregarded when assessing whether a particular monetary jurisdiction has been reached.[18]

[22] The plaintiff argues that their claim was for $159,000 based upon a term "to the end of the 2016 Super Rugby season" which the parties agree ended on 6 August 2016; however I found in my judgment that Mr Connolly's term concluded on 15 July

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13 UCPR r. 360 (1).
14 *Jones v Millward* [2005] QCA 76; [2005] 1 Qd R 498.
15 *Magistrates Court Act* 1921 s. 2 (definition of "prescribed limit"); see also s. 4.
16 *Magistrates Court Act* 1921 s. 2 (definition of "prescribed limit"); see also s. 4.
17 *District Court of Queensland Act* 1967 s. 68(1)(a).
18 *Campbell v Turner* [2007] QSC 362, para 9.

2016 (the conclusion of the Super Rugby season for the Queensland Reds in 2016).[19]

[23] I accept the plaintiff's submission that my finding which resulted in a judgment of $150,000 (rather than $159,000) was based on a term neither contended for by the plaintiff, nor by the defendant in its pleading.

[24] Given that the judgment sum of $150,000 fell precisely on the upper limit of the Magistrates Court (and in practical terms the lower limit of the District Court), I am persuaded that that factor, taken into account with the complexities of the issues in the trial, as well as the matters in paragraphs 22 and 23, above, justify the court ordering otherwise pursuant to UCPR r. 697(2), namely ordering costs pursuant to the District Court scale rather than the Magistrates Court scale.

Fourth issue

[25] The defendant relies on UCPR r. 692(2) which provides that:

> "(2) The party who amends a document must pay the costs thrown away by the amendment, unless the court orders otherwise."

[26] The defendant argues that there were two amendments to the statement of claim requiring two amended defences, a rejoinder and a request for particulars of the amended statements of claim.

[27] The plaintiff, however, refers to the decision of Mullins J in *Michael Vincent Baker Superannuation Fund Pty Ltd v Aurizon Operations Limited (No 2)* [2017] QSC 63, paras 16 – 21, and submits that it is unnecessary to make such an order in the circumstances of this case. As her Honour stated:[20]

> "Where r 386 and/or r 692 operate to require the amending party to pay the other party's cost thrown away by the amendments, a specific order that the costs of the success of amendments to the statement of claim be excised from the costs payable by the defendants otherwise to the plaintiff is not required. It is superfluous to spell out the consequence that the amending party cannot recover its costs of the amendment from the other party. That follows as a matter of course from the application of r 386 or r 692."

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19 *Connolly v Queensland Rugby Union Ltd* [2017] QDC 221, para 161.

20 *Michael Vincent Baker Superannuation Fund Pty Ltd v Aurizon Operations Limited (No 2)* [2017] QSC 63 at [17].

[28] With respect, I adopt the reasoning of Mullins J and I do not propose to make an order that refers to the effects of UCPR r. 368 or r. 692, because it is unnecessary to do so.

Conclusion

[29] In the light of the reasons that I have expressed above, the further orders should be as follows:-

1. The defendant Queensland Rugby Union Ltd pay the plaintiff John Connolly the sum of $13,489.25 interest to the date of judgment (1 September 2017).
2. The defendant pay the plaintiff's costs of and incidental to the proceedings to be assessed on an indemnity basis on the District Court scale.