DISTRICT COURT OF QUEENSLAND

CITATION:	*Russells (a firm) v McCosker* [2018] QDC 80
PARTIES:	**RUSSELLS (a firm)** (Applicant/Respondent) **v** **DEBRA JANET MCCOSKER** (Respondent/Applicant)
FILE NO/S:	498/2017
DIVISION:	Civil
PROCEEDING:	Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	16 May 2018
DELIVERED AT:	Brisbane
HEARING DATE:	17 April 2018
JUDGE:	Farr SC DCJ
ORDER:	**1. The plaintiff's application is dismissed.** **2. If the plaintiff has not paid the sum of $31,347.25 to the defendant by 5.00 pm on 23 May 2018, then pursuant to r 84(3) of the Uniform Civil Procedure Rules 1999 (Qld) the plaintiff provide to the defendant, by 5.00 pm on 24 May 2018, written notice of the following details of the members of the plaintiff's partnership, as at the time the plaintiff's claim was filed, and as at 1 March 2018:** **(a) The names and places of residence of each natural person;** **(b) The names and registered office of each entity.** 3. **The defendant's application seeking a declaration that the plaintiff is not entitled to set-off its liability for costs arising pursuant to the order of Judge Koppenol DCJ made on 21 August 2017 is dismissed.**
CATCHWORDS:	COSTS – ASSESSMENT – where it was ordered that the plaintiff pay the defendant's costs of the application for summary judgment on an indemnity basis – where defendant provided a purported costs statement for assessment of costs – where plaintiff provided a purported notice of objection to

the costs statement – where costs assessor was appointed by way of default assessment – where plaintiff's purported notice of objection not provided to costs assessor – where default assessment occurred and certificate issued – where plaintiff seeks to set aside costs order of the deputy registrar and decision of the costs assessor and have the defendant's costs reassessed COSTS – ASSESSMENT – requirements for valid cost statements – requirements for valid notices of objection – whether the defendant's costs statement was valid – whether the plaintiff's notice of objection was valid

COSTS – SET-OFF – where the plaintiff seeks entitlement to set-off costs – where the defendant seeks declaration that no set-off be permitted – whether set-off of costs is appropriate

PARTNERSHIP – partnership proceeding – where the defendant seeks orders for production of certain information about the partnership from the plaintiff – whether such orders should be made

Uniform Civil Procedure Rules 1999 (Qld) r 84(3), r 703, r 705, r 706, r 708, 709

Tablelands Regional Council v Pensini & Anor (Unreported, Supreme Court of Queensland, Henry J, 19 December 2012)
Elphick v Elliott [2003] 1 Qd R 362
Team Dynamik Racing Pty Ltd v Longhurst Racing Pty Ltd [2008] QSC 36

COUNSEL: J W Peden QC for the applicant/respondent

M E B Williams for the respondent/applicant

SOLICITORS: Synkronos Legal for the applicant/respondent

ClarkeKann Lawyers for the respondent/applicant

[1] This matter involves cross-applications so for ease of reference, I will refer to "Russells" as the plaintiff and "Ms McCosker" as the defendant throughout this decision.

Background

[2] On 10 February 2017, the plaintiff commenced proceedings ("the proceedings") against the defendant for the recovery of $167,540.00 for legal costs and expenses owing under a retainer agreement dated 23 May 2014 ("the retainer"), in respect of litigation conducted by the plaintiff on behalf of the defendant in several proceedings in the Supreme Court of Queensland and an appeal to the Court of Appeal ("the appeal").

[3] The defendant has not filed a Notice of Defence or Defence in the proceedings.

[4] On 5 April 2017, the plaintiff filed an application in the proceedings seeking orders requiring the defendant to identify any legal costs for which she sought assessment. That application also sought, to the extent that there was no challenge to the fees of

a barrister who had appeared for the defendant on the appeal, summary judgement in respect of that barrister's fees ($48,000.00 plus GST).

[5] Orders were made, by consent, on that application requiring the challenge to be identified, for referral to mediation, and was otherwise adjourned to a date to be fixed.

[6] The defendant then applied, on 27 July 2017, to the Queensland Civil and Administrative Tribunal (QCAT) to challenge the retainer[1].

[7] In August 2017, the plaintiff then re-listed that application for summary judgement, in part, in respect of that barrister's fees.

[8] At that hearing, the defendant took the point that the proceedings were stayed, by operation of s 338(b) of the *Legal Profession Act 2007*. Judge Koppenol ceded to the defendant's stay point and dismissed the summary judgement application and ordered that the plaintiff pay the defendant's costs on the indemnity basis ("the costs order").

[9] It is this costs order that is the subject of the current applications.

The current applications

[10] By its application, the plaintiff seeks, inter alia, to:

(a) Set aside the order of the Deputy Registrar, made 1 March 2018, that the plaintiff pay the defendant's costs of the plaintiff's unsuccessful application for summary judgement;
(b) Set aside, pursuant to r 709 of the *Uniform Civil Procedural Rules 1999* (Queensland) (UCPR), the decision of the Costs Assessor, per the Certificate filed 23 February 2018; and
(c) Have the defendant's costs, the subject of the Indemnity Costs Order, reassessed.

[11] By her application, the defendant seeks:

(a) An order requiring the plaintiff to identify, pursuant to r 84(3) UCPR, the constituent members of its partnership;
(b) A declaration that the plaintiff is not entitled to set off its liability for costs, pursuant to the indemnity costs order and any order as to costs arising out of the two instant applications, against Ms McCosker's alleged indebtedness to the plaintiff; and
(c) An order that the plaintiff pay the defendant's costs of her application on the indemnity basis.

[12] The defendant also seeks orders that the plaintiff's application be dismissed, and that the plaintiff be ordered to pay her costs of that application on the indemnity basis.

[13] The plaintiff's application should be determined first because if allowed, it would dispose of the need for the defendant's application. In fact, the plaintiff has

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1 Second affidavit of Stephens Charles Russell at paras 3 and 32 filed 12 April 2018.

submitted that if its application is dismissed and there is no set off, then the costs the subject of the indemnity costs order made by Judge Koppenol will be paid within seven days. I take this submission to, in effect, be an undertaking on the part of the plaintiff to the court.

The plaintiff's application

[14] Counsel for both parties have agreed that the essential issue is whether the documents purporting to be the costs statement and notice of objection were each valid. The plaintiff submits that the costs statement was invalid and for that reason the default assessment ought not to have proceeded or alternatively even if the court finds that the costs statement was valid, it would also conclude that the notice of objection was valid and again the default assessment ought not to have proceeded. The plaintiff has submitted that the "real mischief" in this matter lies in the defendant having informed the costs assessor that there was no notice of objection, when in fact there was, such that the assessor proceeded down the path of default assessment when he should not have done so.

[15] The defendant submits that the court would have little difficulty in accepting the validity of the costs statement but would find that the purported notice of objection was invalid and that accordingly, default assessment was appropriate in the circumstances.

[16] A document purporting to be the defendant's costs statement in accordance with r 705 UCPR ("the costs statement") was served on the plaintiff, by way of its solicitors, on 17 October 2017.[2]

[17] On 6 November 2017, which is within the 21 day limit required under r 706 UCPR, the plaintiff sent a letter to the solicitors for the defendant identifying objections to the costs statement.[3] The plaintiff submits that this letter constitutes a notice of objection compliant with the requirements as set out in r 706(2) UCPR.

[18] That letter was not in form 61 under the UCPR and, the defendant submits was not compliant with the requirements of such a document as set out in r 706(2) UCPR.

[19] The objections which that letter raised included relevantly:

(a) That the costs statement was not a valid costs statement as it did not comply with r 705(2) UCPR;
(b) That the costs statement did not identify the basis of the costs claimed, including whether it had been prepared by reference to the relevant scale of fees (see r 703(3)(a) UCPR) or a costs agreement (see r 703(3)(b) UCPR);
(c) Made the point that various items were not reasonable amounts or reasonably incurred (therefore invoking the test under r 703(3) UCPR);
(d) Included an open offer of $15,050.00.

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2 Affidavit of Mitchell Stephen Teasdale filed on 30 January 2018, Exhibit MST-1.
3 This letter is mistakenly dated 15 August 2017, see affidavit of Mitchell Stephen Teasdale filed 30 January 2018 at paragraph 4.

[20] On 12 December 2017, solicitors for the defendant responded, by email[4] to the author of that letter, Mr Stephen Russell, managing partner of the plaintiff, but not to the solicitors for the plaintiff[5]. That response conceded some technical deficiencies with the costs statement, and provided further documents and information in support of the claims, including a redacted version of the invoice rendered to Ms McCosker by her solicitors, so that the plaintiff could identify the name, standing and hourly rate of each of the partners and employees of that firm whose professional charges were included in the costs statement.

[21] Due to oversight, Mr Russell did not see that response.[6] As a consequence, no reply was made to the email of 12 December 2017, whether by way of further letter or by serving a notice of objection.

[22] The defendant's application for the appointment of a costs assessor (Mr Petersen), to carry out the assessment, was filed and served on the plaintiff on 30 January 2018[7] and in covering correspondence, the defendant expressly informed the plaintiff that her application was an "application for default assessment of costs". The plaintiff did not respond to the defendant's letter or to the service of her application for the appointment of a costs assessor.

[23] Mr Petersen was appointed to assess the defendant's costs, by order of the registrar dated 8 February 2018. The plaintiff had not challenged the appointment of Mr Petersen to undertake the default assessment by this time, despite having been served with the defendant's application for his appointment more than a week prior.[8]

[24] On 20 February 2018 Mr Petersen wrote to the parties and gave his directions for the assessment.[9]

[25] The plaintiff did not make any submission to Mr Petersen prior to his concluding the assessment and providing his Certificate (on the evening of 21 February 2018).[10]

[26] On 20 February 2018, there were exchanges of emails, but importantly for the issue at hand, Mr Petersen enquired of the defendant if there was any notice of objection. Notwithstanding the plaintiff's letter of 6 November 2017, the defendant informed Mr Petersen:

> "I can confirm that no notice of objection has been received and that this is a default assessment."

[27] The defendant has submitted that the plaintiff's letter, received on 6 November 2017, was not provided to Mr Petersen, because:

(a) It was not a notice of objection, pursuant to r706(2) UCPR;

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4 January affidavit of Mitchell Stephen Teasdale Exhibit MST-3.

5 Notwithstanding that on 13 October 2017 Synkronos Legal communicated in writing to the defendant's solicitors advising that it held instructions to receive service of all documents in the District Court proceedings on behalf of the plaintiff.

6 Second affidavit of Stephen Charles Russell at paras 19 to 24.

7 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-1.

8 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-1.

9 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-5.

10 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-9.

(b) The matters raised therein had been comprehensively responded to by the defendant, and no matters raised therein remained outstanding;
(c) The plaintiff had not replied to the defendant's letter dated 12 December 2017, causing the defendant to conclude, quite reasonably, that her comprehensive response of 12 December 2017 had settled the issues raised by the plaintiff regarding her costs statement; and
(d) The letter contained what might have arguably have been an offer to settle costs (pursuant to r 733 UCPR) which, pursuant to r 733(4) UCPR, the defendant was prohibited from disclosing to Mr Petersen, until Mr Petersen had completed his assessment[11].

[28] Mr Petersen assessed the costs on the basis that no notice of objection existed and allowed the amounts claimed in full. He filed a certificate on 23 February 2018[12] and the defendant has filed an order for the amount of the costs dated 1 March 2018 (the order).

[29] The day after Mr Petersen advised the parties of the outcome of his assessment, the plaintiff enquired, via email, as to whether:
(a) Its letter of 6 November 2017 had been brought to Mr Petersen's attention prior to his undertaking the assessment; and
(b) Asserted that the plaintiff had never received any response to that letter.

[30] There is then further correspondence between the parties, and Mr Petersen gave reasons, which in essence state that he proceeded with a default assessment on the advice that there was no notice of objection.

Submissions

[31] The plaintiff submits that the costs statement dated 17 October 2017 was not properly completed such as to trigger the assessment process under r 708 UCPR. It submits that the basis for the costs claimed was not identified, namely whether it was prepared having regard to a costs agreement or to the relevant scale and that the defendant's response to the plaintiff's letter of 6 November 2017 did not provide sufficient detail to enable the plaintiff to understand the basis for the costs claimed. The plaintiff submits that without knowing whether costs were claimed under a costs agreement or a scale, it would be impossible for it to "understand the basis for the costs". It is submitted therefore that the lack of an identified basis for the costs being claimed renders the costs statement deficient under r 705(2) UCPR.

[32] The defendant maintains that the costs statement was compliant with r 705(2) UCPR. She further submits however that even if it was not compliant because of the omission of some details, that defect was cured upon the delivery of information to the plaintiff on 12 December 2017.

[33] The defendant further submits that this part of the plaintiff's application should be dismissed for the reason that it would be improper for the plaintiff to seek to have the decision of the costs assessor set aside in circumstances where:

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11 The plaintiff's letter received on 6 November 2017 was provided to Mr Petersen after he had completed his assessment, for the purposes of r 733 UCPR.
12 Court document 17.

(a) The plaintiff's letter received 6 November 2017 did not constitute a notice of objection as required by r 706 UCPR; and

(b) The plaintiff did not, prior to the appointed costs assessor completing the assessment:

(i) Take issue with the appointment of the costs assessor to undertake what was expressly described as a default assessment under r 708 UCPR; nor

(ii) Make any submission to the costs assessor prior to the completion of his assessment.

Conclusion regarding cost statement

[34] R 703(3) UCPR relevantly states:

> "*When assessing costs on indemnity basis, a costs assessor must allow all costs reasonably incurred and of a reasonable amount, having regard to –*
>
> *(a) The scale of fees prescribed for the court; and*
>
> *(b) Any costs agreement between the party to whom the costs are payable and the parties' solicitor;*
>
> *…*"

[35] R 705 UCPR states:

> *"705 Costs Statement*
>
> *(1) A party entitled to be paid costs must serve a costs statement in the approved form on the party liable to pay the costs.*
>
> *(2) The costs statement must –*
>
> *(a) contains sufficient details to enable the party liable to pay the costs to understand the basis for the costs, prepare and objection to the costs statement and obtain advice about an offer to settle the costs; and*
>
> *(b) if practicable, have attached to it copies of all invoices for the disbursements claimed in the costs statement."*

[36] As already noted, the plaintiff submits that the costs statement was not compliant in that it failed to provide sufficient detail so as to enable the plaintiff to understand the basis for the costs.

[37] That criticism would carry some weight were it not for the contents of the defendant's letter to the plaintiff dated 12 December 2017. That letter responded, comprehensively, to each of the complaints and inquiries concerning the costs statement raised by the plaintiff. It also provided to the plaintiff a redacted version of the invoice rendered to the defendant by her solicitors, identifying the name, standing, hourly rate, time spent and individual amounts charged for each of the partners and employees whose professional charges were included.

[38] That correspondence, together with the costs statement comprehensively provided sufficient detail to enable the plaintiff to understand the basis for the costs. Nevertheless, the plaintiff continues to complain that it does not know whether costs

have been claimed under a costs agreement or a scale. Yet, I note that in the letter of 12 December 2017, the defendant specifically stated:

> "We confirm that the costs set out in the costs statement had been charged to the defendant in accordance with costs agreement between her and this Firm, and between this firm and Mr Egan of counsel and Mr Williams of counsel, respectively".

[39] The plaintiff also submits that "to provide sufficient detail as to enable the plaintiff to understand the basis for the costs", the defendant ought to have provided a copy of the costs agreement to the plaintiff. Yet in the circumstances of this matter that would appear to be unnecessary. Whilst a costs agreement is necessarily a document that a costs assessor would have regard to when conducting the assessment as to whether costs are reasonably incurred and are of a reasonable amount, it does not, in these circumstances, better assist the plaintiff in understanding the basis for the costs.

[40] I note that a similar application before Henry J in *Tablelands Regional Council v Pensini & Anor*[13] failed, with his Honour noting that no legislative basis for such an order had been identified and that the information which had been provided allowed the applicant to understand the basis of the costs claimed. The plaintiff in this matter submitted that Henry J recognised an exception that would have application in this matter when his Honour said:

> *"That is not to say by any means that costs agreements and their contents may not become relevant in the process of costs assessment. To the contrary, particular (sic) when it comes to indemnity costs, that seems almost inevitable".*

[41] However, as is apparent in that statement, his Honour was referring to the relevance of a costs agreement to "the process of costs assessment" – not to the preliminary provision of a costs agreement to the opposing party prior to the assessment taking place.

[42] It follows that the costs statement when read in conjunction with the information contained in the defendant's letter of 12 December 2017, in my view constitutes a costs statement that is substantially compliant with the provisions of r 705 UCPR.[14]

Notice of objection

[43] The plaintiff has submitted that its letter of 6 November 2017 substantially complied with r 706(2)(a)(b) UCPR and therefore should have been treated as a notice of objection, and that Mr Petersen should have been so advised. As I indicated in para 19 above, that letter raised four objections, the first two of which I have already dealt with. The remaining objections were that the various items were not reasonable amounts or reasonably incurred and, that the letter included an offer of settlement in the sum of $15,050.00.

[44] The first problem for that submission arises from the contents of the letter itself where the author:

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13 Unreported decision dated 19 December 2012 in the Supreme Court at Cairns.

14 See s 48A *Acts Interpretation Act 1954*.

(1) Complains that the purported costs statement is non-compliant such that the plaintiff is unable to prepare an objection; and
(2) States that a notice of objection will be served on the defendant within the time prescribed upon receipt of a compliant costs statement.

[45] Apparently therefore, the author, Mr Russell did not intend nor even consider that his letter would constitute and be treated as a notice of objection when he sent it.

[46] Furthermore, the purported notice of objection was not in form 61 under the UCPR, nor did it:

(a) Number each objection;
(b) Give the number of each item in the costs statement to which the plaintiff objects; or
(c) For each objection – concisely state the reasons for the objection identifying any issue of law or fact the objector contends a costs assessor should consider in order to make a decision in favour of the objector.

[47] That failure is hardly surprising given that Mr Russell clearly did not intend that letter to constitute a notice of objection.

[48] The end result is that the plaintiff failed to serve a notice of objection due to Mr Russell's "regrettable" oversight in failing to see and read the relevant email from the defendant's solicitors. Whilst one might sympathise with Mr Russell given the quantity of emails he receives each week, that oversight is not a sufficient reason to warrant the setting aside of the cost assessor's certificate and the subsequent order. That is particularly so given that:

(a) The defendant's application for the appointment of a costs assessor to carry out the assessment, was filed and served on the plaintiff on 30 January 2018[15] (i.e.: some seven weeks after the defendant's response to the plaintiff's letter of 12 December 2017).
(b) By covering correspondence, the defendant expressly informed the plaintiff that her application was an "application for default assessment of costs";
(c) No response was made by the plaintiff;
(d) Mr Peterson wrote to the parties on 20 February 2018 and gave his directions for the assessment;[16] and
(e) The plaintiff failed to make any submissions to Mr Peterson prior to his concluding the assessment and providing his certificate.[17]

[49] Finally, I note that the plaintiff has submitted that the defendant's cost claims are manifestly excessive. This is an issue however that could and should have been addressed with particularity in a notice of objection. Furthermore, I note that the quantum of the assessed cost was $31,347.25. With that amount in mind, the fact that those costs would only be partially reduced on any re-assessment and the

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15 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-1.
16 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-5.
17 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-9.

quantum of costs that would be occasioned to both parties by the plaintiff's application and the conduct of such a re-assessment, would render the quantum of any such reduction almost irrelevant.

Set-off

[50] If the court finds against the plaintiff on the issue of the validity of the costs statement and notice of objection, the plaintiff submits that it is entitled to set-off any costs liability it might have to the defendant against the much larger claim that the plaintiff has against the defendant.

[51] The plaintiff claims that it is entitled to an equitable set-off and relies on the decision of Dutney J in *Elphick v Elliott* [2003] 1 Qd R 362 where his Honour held that the court had jurisdiction to order a set-off of costs against damages. The plaintiff submits that Dutney J recognised that the right of set-off arises from the close connection between the claims[18] and is "an identifiable and defined source of power which has been exercised by courts for many years"[19].

[52] In *Team Dynamik Racing Pty Ltd v Longhurst Racing Pty Ltd* [2008] QSC 36, Fryberg J considered, in an ex tempore judgment, that Dutney J's identification of power was obiter dictum, and that the courts' ability to order set-off arose as a result of its inherent power.

[53] Little turns on that issue however, as it is my opinion that this is not a matter where an order for set-off would be an appropriate exercise of the court's discretion.

[54] By a letter dated 29 March 2018,[20] the plaintiff purported to exercise a right of set-off of its liability for costs arising under the Indemnity Costs Order, against the amount of the defendant's alleged indebtedness to the plaintiff which is the subject of the proceedings. It did so, notwithstanding that the orders of Judge Koppenol did not permit such a set-off. Indeed the plaintiff did not seek any such order when the indemnity costs order was made.

[55] In that letter the plaintiff cited the following four cases in support of its alleged entitlement to set-off:

(a) *Lockley v National Blood Transfusion Service* [1992] 2 All ER 589;
(b) *Elphick v MMI General Insurance Ltd* [2002] QCA 347 at [7];
(c) *Team Dynamic Racing Pty Ltd v Longhurst Racing Pty Ltd* [2008] QSC 36; and
(d) *Sivritas v Sivritas* (No. 2) (2008) 23 VR 349.

[56] I note that the plaintiff has not relied upon each of those cases in support of its argument before this court. Nevertheless, upon examination of them, none of them support the existence of a right of set-off in the present circumstances. *Lockley v National Blood Transfusion Service* is irrelevant to the present circumstances,[21]

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18 At p 364.
19 At p 365.
20 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-16.
21 It involves consideration of whether an order setting off a legally aided litigant's liability for costs against a future award of damages or countervailing costs order, is inconsistent with a lien, in favour of the Legal Aid Authority, arising under statute.

whilst the remaining three cases involve judicial assent to the exercise of a right of set-off of one party's liability for costs as against:

(a) Another party's liability for costs (whether assessed or to be assessed) or
(b) Another party's liability arising pursuant to a judgment of the court.[22]

[57] The significant distinguishing feature between this case and those is that here the defendant's alleged indebtedness to the plaintiff is still only an alleged indebtedness.

[58] Furthermore, there is currently an application by the defendant, before QCAT, to set aside the costs agreement in its entirety. If successful, assessment of the full amount claimed by the retainer (approximately $740,000.00) will occur. If the costs are reduced by anything above the magnitude of 18 to 20 per cent, then the current alleged indebtedness of the defendant to the plaintiff will be extinguished – in fact, it could result in an indebtedness on the part of the plaintiff to the defendant. I am of course not attempting to predict or influence the outcome of that application.

[59] Accordingly, this is not a matter where set-off would be appropriate and I decline to exercise my discretion to make such an order.

[60] The defendant has applied for declaratory relief seeking a declaration that no such set-off ought to be permitted, however, in my view, given my conclusions above no such declaration is necessary.

The defendant's applications

Order to comply with r 84(1) UCPR

[61] Rule 84(1) UCPR states:

> **Disclosure of partner's names**
> *"(1) At any stage of a partnership proceeding, a party may by written notice require the partnership to give the names and places of residence of the persons who are partners in the partnership when the cause of action arose.*

[62] Rule 82 UCPR defines a partnership proceeding to be

> *"A proceeding started by or against a partnership in the partnership name".*

This proceeding is such a proceeding.[23]

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22 *Elphick v MMI General Insurance Ltd* involved an application for set-off between two countervailing costs orders; *Team Dynamic Racing Pty Ltd v Longhurst Racing Pty Ltd* involved an application for set-off between orders for costs made in the proceeding; *Sivritas v Sivritas* involved an application for set-off of liability for costs against the proceeds of sale of property ordered by the court to be sold.

23 The plaintiff is identified as "Russells (a firm)".

[63] By letter dated 28 March 2018,[24] the defendant required the plaintiff to give the names and places of residence of the members of the partnership of Russells, pursuant to r 84(1) UCPR. The plaintiff replied the next day[25] but did not provide those names and places of residence.

[64] Therefore, the plaintiff has failed to comply with r 84(1) UCPR and it is appropriate to make the order sought, with one proviso. As I stated in paragraph 13 above, the plaintiff has effectively undertaken to pay the assessed sum of $31,347.25 within seven days of this decision if its applications are unsuccessful. Accordingly, I will order that r 84(1) UCPR be complied with if that amount is not paid within that seven day period.

Orders

[65] The order of the court is that:

1. The plaintiff's application is dismissed.
2. If the plaintiff has not paid the sum of $31,347.25 to the defendant by 5pm on 23 May 2018, then pursuant to r 84(3) of the *Uniform Civil Procedure Rules* 1999 (Qld) the plaintiff provide to the defendant, by 5.00 pm on 24 May 2018, written notice of the following details of the members of the plaintiff's partnership, as at the time the plaintiff's claim was filed, and as at 1 March 2018:
   (a) The names and places of residence of each natural person;
   (b) The names and registered office of each entity.
3. The defendant's application seeking a declaration that the plaintiff is not entitled to set-off its liability for costs arising pursuant to the order of Judge Koppenol DCJ made on 21 August 2017 is dismissed.

[66] I note that the defendant has submitted that the plaintiff should pay the defendant's costs of both applications on the indemnity basis, but I have heard no detailed arguments regarding the issue of costs. I will therefore hear the parties as to costs.

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24 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-15.
25 April affidavit of Mitchell Stephen Teasdale – Exhibit MST-16.