DISTRICT COURT OF QUEENSLAND

CITATION:	*Crisp v Queensland Law Group – A New Direction Pty Ltd* [2019] QDC 156
PARTIES:	**ABBY CRISP** (Appellant) **v** **QUEENSLAND LAW GROUP – A NEW DIRECTION PTY LTD ABN 57 064 877 425** (Respondent)
FILE NO/S:	D207 of 17
DIVISION:	Appellate
PROCEEDING:	Civil
ORIGINATING COURT:	Southport
DELIVERED ON:	23 August 2019
DELIVERED AT:	Brisbane
HEARING DATE:	14 February 2019
JUDGE:	Muir DCJ
ORDER:	**1. The appeal is dismissed.** **2. I will allow the parties until Monday 9 September 2019 to provide short written submissions [of no more than two pages] as to the appropriate costs orders. Alternatively, if consent orders can be agreed they should be forwarded to my associate. If neither of these things occur within the time allowed, I will order that the appellant pay the respondent's costs of the Magistrate's Court application and the District Court appeals.**
CATCHWORDS:	APPEAL – PROCEDURE – an appeal from the Magistrates Court – remitted from Court of Appeal for determination of issue of leave to extend time CIVIL PROCEEDINGS – LEGAL PROFESSION ACT – application for assessment of legal costs out of time – where the appellant was a plaintiff in a personal injury action – where the respondent acted for the plaintiff in the action – where the respondent provided a lump sum bill to the plaintiff – where the respondent provided a second itemised bill to the plaintiff – where the plaintiff filed an application for a costs assessment outside of the statutory time period – whether

there was a reason for the delay – whether the court has to be satisfied that there is a reason for the delay before the discretion to extend time is enlivened – whether other factors relevant to the exercise of the discretion

District Court of Queensland Act 1967 (Qld), s 113

Legal Profession Act 2007, s 114, s 308, s 335

Magistrates Court Act 1921, s 45

Uniform Civil Procedure Rules 1999 r 765, r 783, r 785

ACN 097823142 (formally Sherwood Group Pty Ltd) v Gadens Lawyers [2018] QDC 271

Allesch v Maunz (2000) 203 CLR 172

Chambers v Jobling (1986) 7 NSWLR 1

Cupo & anor v Anderssen Lawyers [2015] QSC 202

Crisp v Queensland Law Group – A New Direction Pty Ltd [2018] QDC 42

Dat & Anor v Gregory [2016] QCATA 36

Dearman v Dearman (1908) 7 CLR 549

Fox v Percy (2003) 214 CLR 118

House v R (1936) 55 CLR 499

JJ Richard & Sons Pty Ltd v Precast Concrete Pty Ltd [2010] QDC 272

Mbuzi v Torcetti [2008] QCA 231

Queensland Law Group – A New Direction Pty Ltd v Crisp [2018] QCA 245

Robinson Helicopter Company Incorporated v McDermott (2016) 90 ALJR 679; [2016] HCA 22

Teelow v Commissioner of Police [2009] QCA 84

Warren v Coombes [1979] HCA 9; (1979) 142 CLR 531

COUNSEL: T.H.S Jackson for the Appellant

D.A Skennar QC with M Lazinski for the Respondent

SOLICITORS: Byrne & Lovel Lawyers for the Appellant

Queensland Law Group – A New Direction Pty Ltd for the Respondent

Introduction

[1] This appeal concerns whether a magistrate erroneously refused the **appellant**, Ms Abby Crisp, leave to pursue an application [made out of time] for a costs assessment of a bill delivered to her by the **respondent**, Queensland Law Group – A New Direction Pty Ltd, under s 335(6) of the *Legal Profession Act* (2007) (Qld) ("the **Act**").

Nature of and courts power on appeal

[2] The statutory basis of the appeal in this case was not identified in the notice of appeal or addressed in the written or oral submissions before me. But of course before determining the appeal I must satisfy myself that I have jurisdiction.

[3] By section s 45(1) of the *Magistrates Court Act* 1921 (Qld), a party dissatisfied with a judgment or order in an action in which the amount involved is more than the minor civil dispute limit may appeal to the District Court as prescribed by the rules. The term "action" in this section is to be interpreted broadly and "includes every sort of legal proceedings".[1] I am satisfied that s 45(1) contemplates an appeal from the type of decision made by the magistrate in this case. The respondent's bill was for $104,533, so I am also satisfied that the amount involved is above the statutory minimum.[2]

[4] On an appeal from a Magistrates Court this court has the same powers as the Court of Appeal has to hear an appeal.[3] This appeal is one as of right and is made under Chapter 18 r 783 of the *Uniform Civil Procedure Rules* 1999 ("**UCPR"**).

[5] Rule 765(1) [made applicable by r 785] provides that an appeal under Chapter 18 of the UCPR is an appeal by way of rehearing. A rehearing involves a "real" review of the original record of proceedings below rather than a fresh hearing.[4] The appeal judge is required to review the evidence, to weigh the conflicting evidence, and to draw his or her own conclusions.[5] In undertaking this task, the judge should afford respect to the decision of the magistrate[6] but may interfere if the conclusion is "contrary to compelling inferences" in the case.[7] If this court concludes that an error has been shown such that the decision of the magistrate is wrong, the decision below should be corrected.[8]

---

1 See the discussion by McPerhson JA [with reference to the observations of Thomas JA in *Wynch v Ketchell* [2002] 2 Qd R 560] in *State of Queensland v Mowburn Nominees P/L* [2005] 1 Qd R 195 at [17] and [22].

2 The minor civil dispute limit is defined under s 45(5) of the *Magistrates Court Act* 1921 (Qld) as being "the amount that is, for the time being, the prescribed amount under the Queensland Civil and Administrative Tribunal Act 2009." Schedule 3 of that Act provides that the prescribed amount is $25,000.

3 *District Court of Queensland Act* 1967 (Qld), s 113. The powers of the Court of Appeal are set out in UCPR r 766.

4 *Fox v Percy* (2003) 214 CLR 118 at 126.

5 *Mbuzi v Torcetti* [2008] QCA 231 at [17].

6 *Robinson Helicopter Company Incorporated v McDermott* [2016] HCA 22 at [43]; (2016) 90 ALJR 679 at 686 [43]; *Fox v Percy* (2003) 214 CLR 118 at 126-127, citing *Dearman v Dearman* (1908) 7 CLR 549 at 564; [1908] HCA 84.

7 *Chambers v Jobling* (1986) 7 NSWLR 1 at 10; see *Dat & Anor v Gregory* [2016] QCATA 36 at [7].

8 *Fox v Percy* (2003) 214 CLR 118 at 127 – 128, [27]; see *Warren v Coombes* [1979] HCA 9; (1979) 142 CLR 531 at 551; see the discussion by McGill SC in *JJ Richard & Sons Pty Ltd v Precast*

[6] It is well accepted that an appellate court should not interfere with an exercise of judicial discretion unless it can be shown there has been an error such as acting upon a wrong principle; failing to take into account a relevant consideration; taking into account irrelevant or extraneous matters; or proceeding on an erroneous understanding of the facts.[9]

[7] On appeal, this court may amongst other things: draw inferences of fact from admitted facts or facts not disputed; order judgment to be entered for any party; and make any order on such terms as it thinks proper.[10]

Relevant background

[8] There is considerable history to this appeal which is both instructive and relevant to its determination.

[9] The appellant was a plaintiff in a personal injury proceeding. The respondent [and its predecessor, in the form of a partnership] is a firm of solicitors who acted for her in that matter from October 2011. The proceeding was settled on 17 February 2015 and subsequently settlement moneys were paid into the respondent's trust account. On 28 April 2015, the respondent provided a letter to the appellant telling her of the terms upon which her claim had been settled. This correspondence set out a calculation of the amount payable to the appellant after deduction of costs, outlays and GST. This correspondence also enclosed a tax invoice that set out a lump sum for the respondent's professional fees including GST. This tax invoice also set out, in itemised form, the outlays payable to third parties.

[10] The appellant then signed a form of authority authorising the distribution of funds in the respondent's trust account in accordance with the terms of the letter of 28 April 2015. Over the course of the following week the respondent drew moneys from its trust account in accordance with the signed authority to satisfy the amount due to it under the tax invoice.

[11] Just under a year later, on 21 March 2016, the appellant requested the respondent provide her with an itemised bill. On 19 May 2016, the appellant received an itemised bill from the respondent. On 12 April 2017 [almost another year later], the appellant filed an application for the assessment of legal costs for legal services provided by the respondent in relation to her personal injury claim pursuant to s 335(1) of the Act. This application was opposed by the respondent. The issue between the parties concerned the 12 month time limitation contained within s 335(5) of the Act. If "the bill" was the lump sum bill constituted by the "tax invoice" provided by the respondent on 28 April 2015 then the appellant's application was out of time. But if "the bill" was the itemised bill given to the appellant on 19 May 2016, then her application was within time.

Concrete Pty Ltd [2010] QDC 272 at [8]-[19] with reference to *Allesch v Maunz* [2000] HCA 40; (2000) 203 CLR 172 at 180-181 and *Teelow v Commissioner of Police* [2009] QCA 84 at [4].

9 *House v R* (1936) 55 CLR 499, 504-5 per Dixon, Evert and McTiernan JJ and per Dixon, Evert and McTiernan JJ at 505.

10 *Magistrates Court Act* 1921 (Qld), s 47. As this is an appeal under the UCPR, this court also has powers under r 766(1) of the UCPR.

[12] On 16 June 2017, a magistrate found the appellant's application was out of time and declined to exercise her discretion to extend time on the basis that the appellant "did not provide any reason for her delay".[11]

[13] The appellant appealed this decision [out of time] to the District Court. Another judge of this court granted an extension of time within which to appeal and then allowed the appeal. In doing so the judge concluded that as a matter of construction each of the two bills delivered by the respondent was a relevant bill for the purpose of s 335(5)(a) and that, notwithstanding that the time had expired within which to make a costs application in respect of the lump sum bill, a fresh period of 12 months arose upon the delivery of the itemised bill. It followed that the orders made by the magistrate were set aside and the application for the assessment of costs was returned to the Magistrates Court to be dealt with according to law. Because of this conclusion the judge did not deal with the appeal against the magistrate's refusal to extend time to make the application.

[14] The respondent appealed this decision to the Court of Appeal. The Court of Appeal allowed this appeal and found that the District Court had erred in its construction of the Act and that the relevant bill was the one delivered on 28 April 2015 - so that the appellant's application for assessment was out of time.[12] The matter was then remitted to the District Court so that the appellant's appeal against the magistrate's decision not to extend time could be dealt with.

Remaining appeal grounds

[15] The appellant's original notice of appeal before the District Court contained six grounds of appeal. The matter has been remitted for determination of appeal grounds 6 and 7 of the amended notice of appeal as follows:[13]

> "Ground 6 - the learned Magistrate erred in finding there were no reasons for delay in the Application for Costs Assessment being made out of time.
>
> Ground 7 – the learned Magistrate, in refusing the appellant leave to pursue a costs assessment out of time, failed to consider or give due weight to relevant matters, and thereby misdirected herself as to the proper exercise of her discretion, in that her Honour considered only any explanation for the delay, without also considering or giving due weight to the length of the delay, the strength of the grounds on assessment of costs, the respondent's delay in giving an itemised bill of costs, the prejudice likely to be suffered by each party if an extension was granted, and the interests of justice."

Principles governing an application for leave under s 335(6)

[16] Section 335(5) of the Act enables a client to apply for an assessment of the whole or any part of legal costs with the qualification that such an application must be made within 12 months after the bill was given. In this case the relevant bill was delivered on 28 April 2015 and the application was filed on 12 April 2017 so the application was filed nearly one year out of time. But s 335(6) of the Act gives a discretion to the court [or a costs assessor] to deal with such an application as follows:

---

11 Reasons of Magistrate Philipson, 16 June 2017 (**Reasons)** at p 4 ll 4-5.
12 *Queensland Law Group – A New Direction Pty Ltd v Crisp* [2018] QCA 245.
13 Amended notice of appeal filed on 12 March 2018.

"(6) However, a costs application made out of time, otherwise than by any of the following, may be dealt with by a costs assessor or a court if, under the *Uniform Civil Procedure Rules*, the assessor or the court decides to deal with it after considering the reasons for delay -

(a) a sophisticated client;

(b) a third party payer who would be a sophisticated client if the third party payer were a client of the law practice concerned."

[17] It is uncontroversial that the appellant is not a sophisticated client nor a third party payer.

[18] The respondent submitted that s 335(6) of the Act contemplates:

(a) an application made out of time;
(b) the application is by someone other than in one of the two excluded categories; and
(c) after considering the reasons for the delay the court or the assessor may deal with the application.

[19] I accept this submission.

[20] By Ground 7 the appellant argues that the magistrate misdirected herself in the exercise of discretion to extend time in that she failed to consider and give due weight to:

(a) the length of delay;
(b) the strength of the grounds on assessment of costs;
(c) the respondent's delay in giving an itemised bill;
(d) the prejudice likely to be suffered by each party if an extension was granted; and,
(e) the interests of justice.

[21] The respondent accepts that these matters may all be relevant to the exercise of the discretion but submits that if no explanation for delay is proffered, the discretion is not enlivened because s 335(6) permits the court to decide to deal with the assessment only after the court considers the reasons for delay. The respondent articulated this as a preliminary step and that the discretionary factors other than delay only become relevant if this threshold issue is satisfied. In other words, as long as there is some reason for the delay [even a really bad reason] a client gets over the line - to the point that the discretion to extend time can be exercised [whether favourably or unfavourably]. But if there is no reason for the delay, the discretion to extend time is not enlivened.

[22] I reject the submission that there is a threshold issue to be determined under this section before any discretion is enlivened. Crucially, it does not make sense as a matter of statutory interpretation because it is not consistent with what the section says. But it also does not make common sense.

[23] On a plain reading of the section, the correct approach is to consider the reason for the delay first. There may be a satisfactory reason for the delay, an unsatisfactory reason for the delay, or there may be no reason for the delay - it may simply be unexplained. Armed then with this knowledge, whatever it may be, the court must consider all of the discretionary factors that may be relevant to a particular case in order to determine if it will deal with the application.

[24] This approach is consistent with approaches taken by other judges in Queensland to the question of leave under s 335(6) of the Act.

[25] In *Cupo & anor v Anderssen Lawyers* [2015] QSC 202 the court considered an application out of time under s 335(6). Although the reason for delay is not apparent from the judgment, Boddice J does not appear to consider the matter of delay as a threshold question. He approached the exercise of the discretion by considering a number of discretionary factors as follows:[14]

> "The Applicants accept that at least part of the application for a costs assessment has been made out of time. That being so, the application may only be brought with the leave of the Court. In considering whether it is appropriate to grant such leave, it is relevant to consider the nature of the overall retainer, the length of time over which it took the ultimate proceeding to be finalised and the circumstance that the excessive nature of any costs may only have been fully clear once all of the bills had been rendered by the Respondents and Mr Allan." [Emphasis added]

[26] In *ACN 097823142 (formally Sherwood Group Pty Ltd) v Gadens Lawyers* [2018] QDC 271 Richards DCJ observed that the Act only referred to "the reasons for delay" but she also noted the discretionary factors outlined in *Cupo* and that the court must also act justly.[15] In this decision, despite the delay being significant and the explanation for it less than satisfactory, Richards DCJ allowed the application because in her view there was some merit to the challenge of the costs claimed.

[27] An unfettered approach to an application for leave to extend time under s 335(6) is also consistent with the approach taken on other applications for extensions of time such as the filing of an appeal. To that end the observations of Muir J in *Beil v Mansell (No. 1)* are apposite: [16]

> 'The court's discretion to extend time is unfettered, but like any discretion of this nature it must be exercised judicially. Mere lapse of time, of itself, is not generally regarded as imposing an insuperable obstacle to an extension of time, nor is the lack of satisfactory explanation for the delay, and the merits of the substantive application are a relevant consideration.'

[28] It is with these principles in mind I turn to a consideration of the appeal grounds in the context of the hearing and decision below.

The hearing below

---

14 *Cupo & anor v Anderssen Lawyers* [2015] QSC 202 at [56].
15 *ACN 097823142 (formally Sherwood Group Pty Ltd) v Gadens Lawyers* [2018] QDC 271 at [9].
16 [2006] 2 Qd R 199 at [40].

[29] The application for costs assessment was mistakenly premised on the basis that the 19 May 2016 bill was the relevant bill. The appellant's solicitor maintained below [despite being put on notice that it was a live issue and there having been a previous adjournment of the application] that there had been no delay because the application was filed within time. The affidavit from the appellant in support of the application dealt with the history of the matter but did not address the issue of delay at all.

[30] On 17 June 2017, the magistrate dismissed the appellant's application. She gave ex tempore **Reasons**, including as to why she refused to extend the time for the filing of the application, as follows: [17]

> 'In the material filed by the applicant in support of her application, I am of the opinion that she has not provided any reason for her delay. It is clear that she, by the very nature of the application being filed out of time and the submissions made on her behalf, that there was a misapprehension about when – a misapprehension in relation to the tax invoice which I found to have been a legal bill – lump sum bill. However, that, in my view, does not go any way and that the applicant has had opportunity to put in evidence before this Court in explanation for the delay and has failed to do so. In the circumstances, I will not exercise my discretion to extend the period in which a costs application can be bought [sic]. Thank you.' [Emphasis added]

[31] It is apparent from the transcript of the hearing and her Honour's ex tempore Reasons, that the magistrate accepted the respondent's submission as to the constraints on her discretion, absent a reason for the delay.[18]

[32] By Ground 6 the appellant submits that the magistrate erred in finding there were no reasons for filing the application out of time. On one view this ground is not strictly made out. In her Reasons the magistrate expressly stated that she accepted that an inference was open as to the reason for the delay [the misapprehension in relation to the tax invoice] so arguably there was a finding as to a reason for the delay. But then the magistrate went on to say that there was no evidence from the appellant about the delay and in that circumstance she would not exercise her "discretion" to extend time. So on another view she made no finding. I do not need to resolve this tension in the reasons because on either view the magistrate ought to have considered other discretionary matters and not just the reason for delay.

[33] In my view the real error in the magistrate's approach was to confine her discretion only to the issue of the reason for the delay without also considering or giving due weight to the length of the delay and without considering other discretionary factors, such as: the strength of the grounds on the assessment of costs, the respondent's delay in giving an itemised bill of costs, the prejudice likely to be suffered by each party if an extension was granted and the interests of justice.

[34] It follows that Ground 7 is made out.

[35] My powers on appeal include making any order the nature of the case requires and I consider proper. A considerable amount of time and money has already been expended by the parties in relation to this application. There is no good reason for

---

17 Reasons at p 4 ll 4-13.

18 T 1-26 ll 20-24;T1-27 ll 21-28.

me to remit the matter back to the Magistrates Court when the relevant material and submissions from that court are before me. The appropriate course is for me to consider the issue of leave in light of all of the relevant discretionary factors in this case.

Delay

[36] On appeal the appellant sought leave to read and file an affidavit from her solicitor swearing to his misapprehension as to the time limit. At the outset of the hearing of the appeal, I rejected the admission of this affidavit. It follows that there remains no direct evidence of any reason for delay.

[37] The applicant advanced the following three submissions before the magistrate [and on appeal] as reasons for the delay in applying to the court for a costs assessment:

(a) first, the appellant was operating under a misapprehension as to the time limit;

(b) second, the respondent's delay in providing an itemised bill contributed to the appellant's delay; and

(c) third, a question as to the enforceability of the appellant and respondent's costs agreement, which was instrumental to the decision to bring the application, was only discovered shortly before the hearing of the application.

Misapprehension of the time limit

[38] The respondent submitted that the appellant was operating under a misapprehension as to the time limit because it is plain on the face of the conduct of the application. The appellant submits that the evidence as to the alleged misapprehension is at its highest that the solicitor incorrectly interpreted the legislation or with the benefit of hindsight might have done something different. The respondent points to there being no evidence from the appellant about any misapprehension or communication from her solicitors about delay at all.

[39] I accept there is no evidence from the appellant about this. But in my view given the way the application was argued and run below by the appellant's solicitor and inferentially on her instructions, the inference submitted by the appellant is open and easily drawn. It follows and I find that one of the reasons the application was made out of time was because of the appellant's solicitor's incorrect view about the timing of the relevant bill which he mistakenly thought brought the application within one year.

Failure to provide an itemised bill within time

[40] The respondent submits that this submission is contrary to the appellant's initial conduct of the matter below. I accept this submission. The appellant initially rejected below that she had been given a proper itemised bill but now argues that the itemised bill was relevant to her decision to apply for assessment.

[41] Here the itemised bill was requested on 21 March 2016 and delivered on 19 May 2016. The time limit under the Act expired on 28 April 2016 but the application

was not filed until 12 April 2017. Even accepting that receipt of the later bill was relevant to her assessment, a short delay in the provision of an itemised bill as occurred here does not otherwise explain a further delay of nearly a year.

[42] As the President of the Court of Appeal observed in the appeal judgment, the Act allows an interval of 12 months for a request for delivery for an itemised bill and this must be met by the law practice within a "mere 28 days".[19] And "in the case of inordinate delay beyond the limitation period, such delay would furnish a ground upon which to extend time under s 335(6)."[20] In the present case the respondent ought to have furnished an itemised bill by 21 April 2016 but there was a delay of some 26 days in the provision of this bill. This could hardly be described as an inordinate delay as envisaged by the President.

[43] In my view, the delay by the appellant in not filing her application for a costs assessment until almost another year after she then received the itemised bill is a significant one that was not adequately explained, apart from the inference that there was the misapprehension about when the time was to run.

[44] It follows and I find that the appellant's explanation that her delay was also caused by the respondent's delay in delivering the itemised bill is not a satisfactory one.

Enforceability of the costs agreement

[45] The appellant points to the enforceability of the appellant and respondent's costs agreement as a reason for delay and says that it was "instrumental to the decision to bring the application."[21] The appellant links this discovery to information received from the Queensland Law Society about the incorporation of the respondent.[22]

[46] I do not accept this submission as any reason for delay. The information was not received by the appellant's solicitors until 12 June 2017, whereas the application for costs assessment was filed on 12 April 2017.

Merits

[47] The appellant submits that she has a strong likelihood of recovery because:

(a) the respondent charged her for work carried out by it prior to notifying the Law Society of its incorporation contrary to s 114 of the Act; and

(b) the respondent charged the appellant $104,533 in circumstances where the respondent's costs estimate to the appellant was $20,000 to $50,000 contrary to s 308 of the Act.

[48] The respondent points out that the appellant's submission bears no resemblance to the matters actually relied upon by the appellant in her affidavit filed in the Magistrates Court. In that affidavit the appellant disputed the costs on various

---

19 *Queensland Law Group – A New Direction Pty Ltd v Crisp* [2018] QCA 245 at [21].

20 Ibid.

21 The challenge to the enforceability being that the respondent allegedly charged the appellant for work carried out by it prior to notifying the Law Society of its incorporation as discussed under the heading Merits.

22 The appellant's outline of argument at paragraph [22] and Magistrates Court transcript at T1-34 ll 20-35.

grounds, none of which included non-compliance with ss 114 or 308 of the Act. I accept this submission. But as documents upon which these submissions are based were in evidence below, I consider it appropriate to address these submissions on appeal.

Section 114 LPA argument

[49] The appellant argues that the respondent charged the appellant for work carried out by it prior to notifying the Law Society of its incorporation.

[50] Section 114 of the Act states:

> "**114 Notice of intention to start providing legal services**
> (1) Before a corporation starts to engage in legal practice in this jurisdiction, the corporation must give the law society notice, in the law society approved form, of its intention to do so.
> (2) A corporation must not engage in legal practice in this jurisdiction if it has not given a notice under subsection (1).
> Maximum penalty—
> (a) for a person guilty under the Criminal Code, chapter 2, of an offence—300 penalty units; or
> (b) for a corporation—1,500 penalty units.
> (3) A corporation that starts to engage in legal practice in this jurisdiction without giving a notice under subsection (1) is in default of this section until it gives the law society notice, in the law society approved form, of the failure to comply with that subsection and the fact that it has started to engage in legal practice.
> (4) The giving of a notice under subsection (3) does not affect a liability under subsection (1) or (2).
> (5) A corporation is not entitled to recover any amount for anything the corporation did in contravention of subsection (2).
> (6) A person may recover from a corporation, as a debt due to the person, any amount the person paid to or at the direction of the corporation for anything the corporation did in contravention of subsection (2).
> (7) This section does not apply to a corporation mentioned in section 111(2) or (3)."

[51] The appellant's submissions refer to evidence and an extract from the transcript before the magistrate to support this submission.[23] But as the respondent submits neither of these citations identify any evidence as to a failure by the respondent to notify the Law Society of the incorporation. The uncontroverted evidence is that notification of the change of the legal practice following incorporation was given to the Queensland Law Society on 21 June 2012 and that at no time prior to 30 June 2012 did the incorporated legal practice engage in legal practice.[24] The

---

23 The appellant's outline of argument at paragraph [21(a)].

24 The affidavit of Mr Scanlan sworn 14 June 2017 at paragraphs [7], [8] and [9].

uncontroverted evidence is that the Queensland Law Society gave the respondent authority to act as an incorporated legal practice from 1 July 2012. [25]

[52] On the material before me I am not satisfied that the appellant has any prospect of challenging the amount charged by the respondent on this basis.

Cost estimate

[53] Section 308(1)(c) of the Act requires a law practice to disclose to a client, inter alia, an estimate of the total legal costs and an explanation of the major variable that will affect the calculation of those costs. In this case, the respondent's estimate of professional fees for a claim settled before trial was in the range of $20,000.00 to $50,000.00. In the Client Agreement executed by the appellant on 1 September 2012 the respondent identified the following issues as potentially affecting the estimate:[26]

> "**ESTIMATE OF TOTAL LEGAL COSTS**
>
> There are many influences on the total of Professional Fees including the:
>
> - complexity of the Claim;
> - number of documents involved;
> - time spent on the Claim;
> - research and consideration of questions of law and facts required;
> - extent to which liability is not admitted by the Insurer;
> - length of time the Claim takes to settle or proceed to trial.
>
> Due to the difficulty in accurately predicting such matters and their likely impact on the costs of performing the work required, the figures provided are an estimate only and do not bind the Qld Law Group.
>
> **Explanation of Estimates**
>
> In preparing this range of estimates, the Qld Law Group has drawn on the Qld Law Group's experience of acting in similar matters in the past. It is the best estimate the Qld Law Group can produce at the outset of this Claim. The Act requires the Qld Law Group to provide an explanation of the major variables that will affect the calculation of the amounts in the range. These are:
>
> - the Claim may be more complex than initially thought;

---

25 A copy of the notice to the Queensland Law Society is at pp 11-15 of exhibit JAL-1 to the affidavit of Mr Lovel sworn 13 June 2017.

26 The affidavit of Amber Elizabeth Legge sworn 23 May 2017 (**Ms Legge's affidavit**) at exhibit AEL-008.

- the Claim may necessitate the use of higher status professional staff e.g. partner, consultant or senior associate to a greater degree than initially thought;

- the way in which the Insure conducts its case may cause total Legal Costs to increase beyond the level thought likely at the outset e.g. a greater number of interlocutory application, amendments to pleadings, a refusal to make any concessions about liability for your injuries and so on;

- counsel's fees could be higher than initially expected because of the number and complexity of legal arguments, including arguments raised by the Insurer;

- a wider range of expert witnesses than initially expected could become necessary;

- expert's fees could be higher than expected initially because of the need to obtain more highly qualified experts or because of the need for the expert to comment on a wider range of issues than initially expected;

- the period it takes for your injuries to stabilise.

These comments are not intended to be considered as an exhaustive listing. It is never possible to forecast exactly the course the Claim will take.

There are too many variables and too many aspects under the control of other parties for such precision to be ever possible. The Qld Law Group will endeavour to keep you informed of developments which are likely to impact on the Qld Law Group's initial estimate should this appear to be appropriate."

[54] On 13 February 2015, the respondent sent a letter to the appellant enclosing an independent costs assessment of the fees payable by the client upon the settlement.[27] I am satisfied that the appellant received an initial estimate of the fees payable and an estimate of the fees that would in fact be payable, before accepting the settlement.

[55] On 28 April 2015, the appellant was provided with a letter setting out the total costs payable by her and an invoice [which accorded with the independent costs assessment previously provided].[28] The appellant executed an acceptance of the fees payable on settlement.[29] The invoice included a notification of client rights which included that the appellant could apply for a costs assessment within 12 months of delivery of a bill or a request for payment.

[56] By s 326(4) of the Act, the effect of a failure to comply with a law practice's disclosure requirements includes that the amount of the assessment may be reduced.

---

27 Ms Legge's affidavit at exhibit AEL-009.

28 Ms Legge's affidavit at exhibit AEL-0010.

29 By executing the document which is exhibit AEL-0011 to Ms Legge's affidavit. While the appellant said at paragraph 4 of her affidavit in support of the application that the respondent did not provide her with a tax invoice or bill for the amounts it retained in its trust account, the appellant does not deny receiving the letter dated 28 April 2015 or authorising the payment of the legal fees.

I am not satisfied on the present facts that there was any failure to disclose because in my view:

(a) there was compliance with section 308. The costs agreement made it clear that the estimate could be affected by a range of factors; and,

(b) there was a compliance with section 312. The total amount of fees payable was disclosed to the appellant before the settlement.

[57] Further, the appellant did not advance any evidence from any legally qualified persons supporting her challenge to the respondent's professional costs. The only evidence as to the reasonableness of the costs is that of the costs assessor retained by the respondent. That costs assessment for legal fees [without outlays and disbursements] was $77,931.64. This is the amount the appellant was charged.[30]

[58] In my view there is little merit to the appellant's submission that there was non-compliance with s 308 of the Act.

Prejudice

[59] It is uncontroversial that the appellant has paid the respondent's legal fees in full. However, the respondent points to the continuation of an unmeritorious application as a prejudice to it.

[60] I accept this submission. In my view, the matters raised by the appellant going to prospects of success in reducing the amount of fees payable by her on an assessment are of little if any merit. In these circumstances there is a significant prejudice to the respondent in terms of resources, time and money, should I grant leave for what would no doubt be a protracted cost assessment process. In my view, the interests of justice in this case do not support the application for costs assessment continuing.

Conclusion

[61] Taking into account the reason for the delay together with the length of the delay [much of which is unexplained], the appellant's low prospects of success and the prejudice to the respondent in being further embroiled in this matter, I refuse leave to extend the time for the filing of the application for costs assessment.

Order

[62] It follows that the appeal is dismissed.

Costs

[63] The appellant has been unsuccessful in this appeal and ordinarily costs should follow the event such that the appellant ought to pay the respondent's costs of the appeal. Given that there are a number of outstanding costs orders to be determined pending the outcome of this appeal [the Magistrates Court application and the earlier District Court Appeal], I will allow the parties until Monday 9 September 2019 to provide short written submissions [of no more than two pages] as to the appropriate costs orders.

---

30 Ms Legge's affidavit at exhibit AEL-009.

[64] Alternatively, if consent orders can be agreed they should be forwarded to my associate. If neither of these things occur within the time allowed, I will order that the appellant pay the respondent's costs of the Magistrate's Court application and the District Court appeals.