

DISTRICT COURT OF QUEENSLAND

CITATION: *MCC Pty Ltd v TCS Solicitors Pty Ltd (No 2)* [2019] QDC 88

PARTIES: **MCC PTY LTD**
(Applicant)

v

TCS SOLICITORS PTY LTD
(Respondent)

FILE NO/S: 839/19

DIVISION: Civil

PROCEEDING: Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 31 May 2019

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Smith DCJA

ORDER: **The applicant is to pay 50% of the respondent's costs of and incidental to the application as agreed or assessed on the standard basis.**

CATCHWORDS: COSTS – whether costs should be reserved or whether another other should be made

Legal Profession Act 2007 (Q) ss 315, 328

Uniform Civil Procedure Rules 1999 (Qld) r 681, 743G

MCC Pty Ltd v TCS Solicitors Pty Ltd [2019] QDC 71

Re Minister for Immigration and Ethnic Affairs and another; ex parte Lai Qin (1997) 186 CLR 622

COUNSEL: Solicitors for the applicant
Mr C.K. George for the respondent

SOLICITORS: Taylor David Lawyers for the applicant
TCS Solicitors for the respondent

[1] This is the costs decision consequent on the decision given in *MCC Pty Ltd v TCS Solicitors Pty Ltd*.¹

¹ [2019] QDC 71.

- [2] The applicant submits that r 743G of the UCPR provides the court with a general power to hold directions hearings in relation to costs assessment applications. It is submitted that MCC, prior to the matter going to the assessment, proposed directions to refine and determine whether the costs agreements were void; whether there was adequate disclosure as required by s 315 of the *Legal Profession Act 2007*; and whether the costs estimates provided by the respondent were misleading and deceptive. It is submitted that where the outcome of a primary proceeding is particularly uncertain at the time of the relevant interlocutory application, it is more appropriate to leave the determination of costs to the trial judge.
- [3] In this case at no stage did the respondent propose the directions in the form ultimately made. It was only the day before the directions hearing that the respondent delivered an affidavit purporting to exhibit a relevant costs agreement which had been repeatedly requested well in advance of the appearance. Orders materially different from those sought by the respondent were made. Neither party was “successful” in the application in the strict sense, rather the court exercised its discretion to make orders for the conduct and scope of the assessment. In the circumstances the appropriate order is that there be no order as to costs or, alternatively, they be reserved.
- [4] On the other hand, the respondent submits that they repeatedly informed MCC’s solicitors that they would consent to the appointment of Mr Bloom and that no directions for the trial were necessary. Early into the directions hearing on 24 April 2019 TCS readily indicated it could consent to suitable directions to deal with the issues raised by MCC. However, MCC continued to seek directions for trial. Ultimately, the court has ordered the appointment of Mr Bloom together with directions provided by TCS on the above basis. To support its application for directions for trial, MCC served two affidavits, one of which was 323 pages long which obliged TCS to reply. MCC delivered written submissions consisting of 5 pages and supplemented these with oral submissions of about an hour and relied on several cases. During those submissions a new issue was raised as to whether the costs agreements were liable to be set aside pursuant to s 328 of the *Legal Profession Act 2007*.
- [5] It is submitted MCC was wholly unsuccessful in seeking directions for trial and in those circumstances the applicant should pay the costs.

Disposition

- [6] In favour of the applicant is the fact that the matter had to come on for a directions hearing anyway and the affidavit in response was delivered late. On the other hand, MCC persisted unsuccessfully with submissions that the matter be listed for trial. It could have desisted with these arguments.

- [7] It is my view that the respondent did succeed on an issue (i.e. whether the matter should be listed for trial). Success on a particular issue often governs the exercise of the discretion.²
- [8] In all of the circumstances, in the exercise of my discretion I have determined that MCC should pay one-half of TCS's costs.
- [9] I therefore order that the applicant pay 50% of the respondent's costs of and incidental to the application as agreed or assessed on the standard basis.

² *Re Minister for Immigration and Ethnic Affairs and Another; Ex parte Lai Qin* (1997) 186 CLR 622 at p 624.