

DISTRICT COURT OF QUEENSLAND

CITATION: *Tseng v Brisbane City Council (No 2)* [2021] QDC 327

PARTIES: **EN-TZU TSENG**
(appellant)
v
BRISBANE CITY COUNCIL
(respondent)

FILE NO: 3358 of 2019

DIVISION: Appellate

PROCEEDING: Appeal

ORIGINATING COURT: Magistrates Court at Brisbane

DELIVERED ON: 17 December 2021

DELIVERED AT: District Court at Brisbane

HEARING DATE: On the papers

JUDGE: Sheridan DCJ

ORDER: **The appellant pay the respondent's costs of the appeal in an amount of \$3,000.00.**

CATCHWORDS: MAGISTRATES – APPEAL AND REVIEW – QUEENSLAND – APPEAL – where appeal dismissed – where pursuant to s 7 of the *Natural Assets Local Law 2003* (Qld) the appellant was convicted of 62 offences of having caused or permitted protected trees to be interfered with and two further offences of failing to comply with the Compliance Notice and failing to comply with the extended time for compliance – whether appellant should be ordered to pay the costs of the respondent

Justices Act 1886 (Qld), s 226, s 232A,
Justices Regulation 2014 (Qld), sch 2

Latoudis v Casey [1990] HCA 59; (1990) 170 CLR 534, cited

SOLICITORS: Self-represented for the appellant
M Thomas from City Legal for the respondent

Introduction

- [1] On 29 November 2021, I gave my substantive decision dismissing the appeal. I made orders permitting the parties to file submissions as to costs. Ms Tseng was required to file her submissions by 10 December 2021 and the Council was required to file its submissions by 16 December 2021.

- [2] No submissions were filed Ms Tseng but submissions were filed by the Council.
- [3] In its submissions, the Council sought its costs in accordance with the *Justices Regulations* 2014 (Qld) in an amount of \$3,000.00.
- [4] The Council did not seek the payment of any costs associated with the adjournment, at the request of Ms Tseng, of the hearing of the hearing on 2 April 2020. At the time of granting the adjournment as order was made reserving the costs associated with the adjournment.

Statutory Provisions

- [5] Section 226 of the *Justices Act* 1886 (Qld) (**Justices Act**) provides that the “judge may make such order as to costs to be paid by either party as the judge may think just.”
- [6] The term “costs” is not defined.
- [7] Limitations are imposed under the Justices Act on the otherwise broad discretion in s 226. Section 232A(1) requires that, in making any order as to costs, any costs allowed must relate to an item prescribed under a regulation. The items are prescribed in schedule 2 of the *Justices Regulation* 2014 (Qld) (**Justices Regulation**). By s 232A(2) the judge has a discretion to allow a higher amount for costs if “satisfied the higher amount is just having regard to the special difficulty, complexity or importance of the appeal.”
- [8] Section 232A of the Justices Act provides:
- “(1) In deciding the costs that are just for this division, the judge may award costs only –
 - (a) for an item allowed for this division under a scale of costs prescribed under a regulation; and
 - (b) up to the amount allowed for the item under the scale.
 - (2) However, the judge may allow a higher amount for costs if the judge is satisfied that the higher amount is just having regard to the special difficulty, complexity or importance of the appeal.”
- [9] The effect of these provisions is that costs are limited to the amounts permitted under the schedule, unless the Court is satisfied a higher amount is just having regard to the circumstances prescribed by s 232A.

Submissions

- [10] In its submissions, the Council submitted that it was just to award costs in its favour and that there are no apparent circumstances that might influence the Court to exercise its discretion in favour of the appellant.
- [11] Reference was made to statements by Dawson J and McHugh J in *Latoudis v Casey*,¹ where it was observed that a successful party, in the absence of special circumstances, had a reasonable expectation of obtaining an order for costs in its favour.
- [12] The Council sought only the payment of its costs in accordance with the amounts allowed in schedule 2. The Council did not seek the payment of costs in a higher amount than allowed for in schedule 2.
- [13] The amount of \$3,000 was calculated as follows:
- (a) “Court attendance for review on 13 March 2020 - \$300.00
 - (b) Court attendance for directions hearing on 30 March 2020 - \$300.00
 - (c) Court attendance for directions hearing on 31 March 2020 - \$300.00
 - (d) Court attendance for mention on 10 September 2020 - \$300.00
 - (e) Day 1 of hearing on 14 September 2020 - \$1800.00”
- [14] As permitted under item 4 of part 1 of schedule 2, the amounts detailed above were the scale items increased by 20%.

Consideration

- [15] I accept the submissions made on behalf of the Council. There are no circumstances here which would mean that the Council, as the successful party, should not be awarded its costs.
- [16] In circumstances where the Council seeks only scale costs, an order should be made for the payment in the amount sought.

¹ (1990) 170 CLR 534 at [6] and [26].