

DISTRICT COURT OF QUEENSLAND

CITATION: *McIntyre v Suncorp-Metway Limited (No. 2)* [2022] QDC 302

PARTIES: **RAYMOND EMMETT MCINTYRE**
(Plaintiff)
v
SUNCORP-METWAY LIMITED
ACN 010 831 722
(Defendant)

FILE NO: D3017/20

DIVISION: Civil

PROCEEDING: Costs argument following trial

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 13 December 2022 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 13 December 2022

JUDGE: Farr SC DCJ

ORDER: **1. Order as per draft; and**
2. Materials handed up to be placed on the file as part of the papers.

CATCHWORDS: CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – FORMATION OF CONTRACTUAL RELATIONS – AGREEMENTS WITHOUT PREJUDICE – where the claim arose from an assertion by the plaintiff that the defendant bank lost the records of a current bank account in the plaintiff’s name that the plaintiff had never withdrawn or transferred any money from and therefore, should have accrued interest on – where the claim was dismissed – where the defendant submits an order for costs to be paid by the plaintiff for the costs of the proceeding until 17 May 2021 on the standard basis and from 18 May 2021 on an indemnity basis – where the plaintiff submits that the defendant’s offer to settle made on 18 May 2021 did not constitute a true compromise

COUNSEL: Mr D Freeman for the plaintiff
Mr N Derrington for the defendant

SOLICITORS: Bell Legal Group for the plaintiff
Gadens Lawyers for the defendant

- [1] The defendant has submitted that an order should be made that the plaintiff pay the defendant's costs of the proceeding until 17 May 2021 on the standard basis and from 18 May 2021 on an indemnity basis as its primary submission. The date 17 May 2021 is of relevance due to an offer which was made at that time. The offer was that the plaintiff walk away from this claim and that each party would bear its own costs. That offer was made in the context of a covering letter that detailed at least some of the problems with the plaintiff's case which accurately demonstrated the hopelessness of it. As I have indicated to counsel, this was a trial that was doomed to fail because of the nature of the evidence to be presented and the plaintiff has only avoided a reference to the Commissioner of Police for investigation for an attempted fraud because of a submission made by counsel for the defendant during closing submissions that, perhaps, the plaintiff was acting honestly within the terms of his own memory. I did not find any support for that submission, but given that the submission was made I decided not to refer the matter to the Commissioner of Police for investigation.
- [2] The plaintiff has submitted that the offer does not constitute a true compromise in that the offer is for the plaintiff to abandon the claim. No authority supporting the submission that it does not constitute a compromise in the context of each party paying its own costs has been forthcoming. In my view there is an obvious reason for that. It quite clearly does constitute a compromise and it was a reasonable offer in the circumstances. In my view it was unreasonable and imprudent for the plaintiff to reject that offer. There is a subsequent offer, although I do not need to turn to that given the conclusion I have reached on the first. It was a real offer that clearly involved a compromise and was clearly expressed.
- [3] In the circumstances, the order sought by the defendant is appropriate and the order will be as per the draft which was handed up to me. The material handed up this morning can be placed on the file as part of the papers.

Order

- [4] The order of the Court is:

1. Order as per draft; and
2. Materials handed up to be placed on the file as part of the papers.