

LAND COURT,
BRISBANE
28 July 1998

Re: **Claim for Compensation -
Resumption for Road Purposes -
Acquisition of Land Act 1967
(A97-72)**

DECISION ON APPLICATION FOR COSTS

Wagner Investments Pty Ltd

(Claimant)

v.

Chief Executive, Department of Main Roads

(Respondent)

Consequent upon the hearing of judgment in the above matter on 10 July 1998, both parties made application for an award of costs in their favour. Mr C McMahon appeared for the appellant. Mr RS Jones appeared for the respondent.

History of the Claim:

Following resumption of the land, the claimant lodged an initial claim to the Court for an amount totalling \$17,690, including \$16,250 for the land, and \$1,440 for disturbance (legal and valuation fees). At the hearing the appellant sought application to amend that claim to:

- Land (Parcel A - 77 square metres) = \$17,145
- Land (part of Parcel 276 - 248 square metres) = \$12,400
- Disturbance

Legal and Valuation Fees	=	\$1,440	
Owner's time	=	<u>\$7,400</u>	= <u>\$ 8,840</u>

TOTAL = \$38,385

The amount contended by the respondent was for \$2,000 for the land plus disturbance of \$1,440 for agreed legal and valuation fees.

In its decision of 10 July 1998, the Court found compensation to an amount of \$13,440, involving:

- Land (Parcel A - 77 square metres) = \$10,000
- Land (part of Parcel 276 - 248 square metres) = \$ 2,000
- Disturbance (Legal and Valuation Fees) = \$ 1,440

The Legislation

The general powers of this Court in respect of the awarding of costs are to be found in the provisions of section 41(9) of the *Land Act* 1962, which states:

“ The Court may make such order as it thinks fit as to the costs of or incidental to any matter that it has jurisdiction to hear and determine including, without limiting the generality of this sub-section, the costs of an adjournment or application made in a pending matter, allowances to witnesses attending for the purpose of giving evidence at the hearing and the costs of any survey of boundaries. ”

Any costs are further directed under section 27 of the *Acquisition of Land Act* 1967 which states:

“ 27. (1) Subject to this section, the costs of and incidental to the hearing and determination by the Land Court of a claim for compensation under this Act shall be in the discretion of that court.

(2) If the amount of compensation as determined is the amount finally claimed by the claimant in the proceedings or is nearer to that amount than to the amount of the valuation finally put in evidence by the constructing authority, costs (if any) shall be awarded to the claimant otherwise costs (if any) shall be awarded to the constructing authority. ”

Decision:

I note that powers vested in the Land Court in respect of the awarding of costs are of a discretionary nature. However it has been held that in exercising that discretion this Court must do so in a judicially sound manner, and by reference to relevant considerations. In this regard I note the findings of the Land Appeal Court in *Townsville City Council v. Moyses & Morris etc* (1979) 6 QLCR 271 which said at page 273:

“ The general rule, then, is that costs are in the discretion of the Court, but of course the discretion must be exercised judicially, that is, by reference to relevant considerations. “

In seeking to understand the exercise of a judicial nature, I note in the Full Court of the Supreme Court of Queensland in *Wyatt v. Albert Shire Council* (1987) 1 Qd.R.486, where the Court found at page 489:

“ That can only mean for reasons that can be considered and justified. In saying that, we do not intend to imply that reasons must always be given for awarding or withholding costs. In some, perhaps many cases the matter may

be so obvious as not to require explanation in the form of stated reasons. In such cases the findings themselves will ordinarily afford reason and justification for the decision on costs that follows. But where what has been done appears to lack rational justification either in the findings or in the reasons expressed for it, a question may arise whether the decision has been arrived at judicially. It may then be open to review the decision on costs as involving error or mistake of law. “

In *Townsville City Council v. Moyses & Morris etc* supra, the Land Appeal Court also considered the matter of whether the Court should lay down rules or principles on how the Court’s discretion should be exercised, and followed the guidance outlined in *Middleton v. Freier and Others* (1958) Qd.R. 351 where Phillip J, speaking for the Full Court said at page 357:

“...where an unfettered discretion is given by statute or a rule no court can by its decision impose conditions upon the free exercise of that discretion by another court”

In seeking therefore to exercise my discretion on this matter I note that this decision involved four separate items in arriving at the final quantum of the compensation:

- Value of the land in Parcel A (77 square metres)
- Value of the land in Parcel 276 (248 square metres)
- Disturbance (legal and valuation fees)
- Disturbance (owner’s time)

In respect of directions from section 27 of the *Acquisition of Land Act 1967*, in each of those items I could give consideration to the amount determined for each item, or I could consider only the final amount settled for the compensation. In view of the different approaches taken by the parties I believe it would bring an appropriate fairness to any costs awarded if I make some consideration for each separate item.

However, before concluding any of those items I note that in exercising my discretion it is appropriate to not just have regard to the amounts contended in each case by the party. Indeed the Land Appeal Court gave guidance in this matter in *Townsville City Council v. Moyses & Morris etc* (supra), where it said at page 274:

“ Second, where the Court is considering whether it should award costs to an authority, it could be wrong to have regard merely to the amounts of the claim and of the award and of the value put in evidence by the authority. We would think that usually it would be more relevant to enquire whether the conduct of the claimant, including his making of an exorbitant claim, if he has made one, has been such as to force the authority; unreasonably and unnecessarily, into litigation. ”

On the evidence before me I do not conclude any actions by either party that would infer anything other than a professional approach to their claims. In the absence then of any actions or conduct by either party that would influence my discretion in this matter, I will be guided generally by the quantum of the amounts claimed.

In considering the actual quantum of the amounts claimed I note that it has been found that it is the final positions taken up by the parties which is important. In *Commissioner for Railways v. Buckler* [1996] 1 Qd.R. 18, Fitzgerald P in the Court of Appeal found at page 23:

“ Stated in general terms, what the court is now required to do in fixing the incidence of costs under this rule is look to the final positions taken up by the parties. In the case of the claimant, it is the quantum of compensation last claimed. Theoretically at least, its amount might not be known until the final address of counsel for the claimant. In practice, however, s.24(2A) furnishes a disincentive against conduct like that. It does so by restricting the right to amend a claim once it has been filed in accordance with s.24(2A) of the Act. Thereafter an amendment may be allowed; but on terms including payment of costs; see s.24(3). ”

In the current matter the application to amend the initial claim was not contested, and the amounts led at the hearing form the basis of any discretion on costs in the matter.

One further matter for consideration in exercising the discretion of the Court is in relation to the different views of the parties in respect of the nature of Parcel A (77 square metres). The respondent saw no potential for its loss of any special value as a consequence of its separate identity as a parcel capable of separate ownership. On the other hand the claimant saw the separate identity of Parcel A as key to its claim. In the end the Court agreed with the claimant, differing only in the capitalisation rate for determining its value for compensation. While in the end the total quantum of the determination is closer to that of the respondent, the fundamental differences in the approach to the valuation lend weight to some support for the claimant's strategy.

In the matter of the disturbance for legal and valuation fees, I note that there was agreement between the parties. The matter of professional fees was discussed in *Arcpoint Pty Ltd v. The Director-General, Department of Transport* [1992-93] 14 QLCR 115. In the matter of the owner's expenses claimed, I note that the lack of any specific details of those items led to their final non-acceptance. I have no doubt that both the Wagners spent certain times in briefing their professional advisers, however it was their responsibility to

demonstrate those details. To further impact that loss of claim would appear unnecessarily onerous upon the claimants.

That then leaves the separate claims for the two parcels, and the overall quantum of compensation. In summary the respondent was successful for Parcel 276 (248 square metres) and the overall level of compensation. The claimant was successful for Parcel A (77 square metres).

During the hearing on costs it was conceded by the respondent that, in view of the nature of the determination of the components of the costs, it may be inappropriate to order all of the respondent's costs against the claimant. I would agree with that observation. For the reasons stated I find that the claimant has partly satisfied the onus of proof in respect of part of the overall claim, and I will make some allowance for that in the costs now awarded.

Accordingly, it is ORDERED in the exercise of this Court's discretionary powers that the claimant pay an amount of 50 percent (50%) of the respondent's costs of and incidental to the hearing and determination of the claim. The amount of such costs shall be ascertained and fixed by the costs taxing officer of the Supreme Court at Brisbane according to the scale of costs prescribed by law for the time being in respect of proceedings in the Supreme Court in accordance with the provisions of section 41(9) of the *Land Act* 1962.

(NG Divett)

Member of the Land Court