

# LAND COURT OF QUEENSLAND

CITATION: *Apex Outdoor Pty Ltd v Cross River Rail Delivery Authority (No 2)* [2021] QLC 10

PARTIES: **Apex Outdoor Pty Ltd**  
ACN 155 560 535  
(applicant)

v

**Cross River Rail Delivery Authority**  
(respondent)

FILE NO: AQL123-20

PROCEEDING: Application for costs

DELIVERED ON: 17 March 2021

DELIVERED AT: Brisbane

HEARD ON: Submissions closed 25 February 2021

HEARD AT: Heard on the papers

PRESIDENT: FY Kingham

ORDER: **1. The costs of this application be reserved until the claim is determined.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the Court refused an application that would prevent the respondent from calling evidence from a nominated expert – where the respondent sought costs under s 27A of the *Land Court Act 2000* on grounds that it successfully resisted the application – where the applicant submitted that costs are governed by s 27 of the *Acquisition of Land Act 1967* – where the Court held that s 27 of the ALA provides an additional constraint on its discretion to award costs – where the Court held that costs should be reserved pending final determination of the claim

*Acquisition of Land Act 1967* s 27, s 27(1), s 27(2)  
*Land Court Act 2000* s 27A

*Haber v Chief Executive, Department of Main Roads* (2005) 26 QLCR 49; [2005] QCA 123, applied.

*Lim v Moreton Bay Regional Council (No 2)* [2019] QLC 22  
*McDonald v Department of Transport & Main Roads (No. 2)*  
[2016] QLC 8, cited.

APPEARANCES: Not applicable

- [1] Apex Outdoor Pty Ltd claims compensation for the value of its loss of opportunity to construct and operate a digital advertising billboard on leased land in the Brisbane CBD, which was resumed for the Cross River Rail project.
- [2] On 11 February this year, I refused an application by Apex for orders that would have prevented Cross River Rail Delivery Authority from calling evidence from one of its nominated experts.
- [3] Cross River Rail seeks its costs of the application. Apex seeks an order that the costs be reserved until the final determination of its compensation claim. It submitted that the question of costs is governed by s 27 of the *Acquisition of Land Act 1967* (ALA). Apex argued it is common practice to reserve costs in interlocutory applications until the claim is finalised, and that there are no special circumstances that would require the Court to adopt a different approach for this application. The concern addressed by the application was a legitimate one. Apex did not conduct the application in such a way as to impose an unnecessary burden on Cross River Rail.
- [4] Cross River Rail did not address s 27 of the ALA. It submitted costs should be awarded under s 27A of the *Land Court Act 2000* (LCA). On that basis, it should have its costs because it successfully resisted the application and did not act unreasonably in doing so.
- [5] Section 27A of the LCA is as follows:

**27A Costs**

- (1) Subject to the provisions of this or another Act to the contrary, the Land Court may order costs for a proceeding in the court as it considers appropriate.
- (2) If the court does not make an order under subsection (1), each party to the proceeding must bear the party's own costs for the proceeding.

[6] Apex argued s 27A of the LCA is excluded by s 27 of the ALA, which is “a provision of ...another Act to the contrary”.<sup>1</sup> I accept that submission. 27A of the LCA (formerly s 34 of that Act) provides the Court with an unfettered discretion as to costs. Section 27 of the ALA imposes an additional constraint.<sup>2</sup> As such, I consider it is a provision to the contrary.

[7] Section 27 provides:

**27 Costs**

- (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.
- (3) Subsection (2) does not apply to any appeal in respect of the decision of the Land Court or to costs awarded pursuant to section 24(3) or section 25(3).

[8] The effect of s 27(2) is that, if the Court decides to award costs, it can only award them to an applicant if its final claim is closer to the Court’s compensation award than is the constructing authority’s valuation evidence.<sup>3</sup> Otherwise costs must be awarded to the constructing authority.

[9] That constraint favours Apex’s argument that costs should be reserved to the final determination of its claim. The formula imposed by s 27(2) is necessarily directed to an assessment after the claim is determined. It is arguable that the Court could order costs of an interlocutory application under s 27(1). However, that was not argued by Cross River Rail. It seems to me that the usual practice relied upon by Apex is consistent with s 27 of the ALA. There is good sense in reserving the question of costs to the final determination of the claim, and I so order.

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<sup>1</sup> *Lim v Moreton Bay Regional Council (No 2)* [2019] QLC 22 at [4]; see also *McDonald v Department of Transport & Main Roads (No. 2)* [2016] QLC 8 at [9].

<sup>2</sup> *Haber v Chief Executive, Department of Main Roads* [2005] QCA 123 at [17].

<sup>3</sup> *Ibid* at [19].