

# SUPREME COURT OF QUEENSLAND

CITATION: *Greig & Anor v Australian Building Industries Pty Ltd (in liq)* [2002] QSC 343

PARTIES: **JOHN LETHBRIDGE GREIG & ROBERT JOHN DUFF  
as liquidators of AUSTRALIAN BUILDING  
INDUSTRIES PTY LTD (in liquidation) ACN 009 340  
952  
(applicants)**  
**v**  
**AUSTRALIAN BUILDING INDUSTRIES PTY LTD (in  
liquidation) ACN 009 340 952  
(respondent)**  
**and**  
**STRAMIT CORPORATION LTD ACN 005 010 195  
(second respondent)**

**JOHN LETHBRIDGE GREIG & ROBERT JOHN DUFF  
as liquidators of AUSTRALIAN BUILDING  
INDUSTRIES PTY LTD (in liquidation) ACN 009 340  
952  
(plaintiffs)**  
**v**  
**STRAMIT CORPORATION LTD ACN 005 010 195  
(defendant)**

FILE NO/S: S7589 of 2000  
S8117 of 2001

DIVISION: Trial Division

DELIVERED ON: 25 October 2002

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Mullins J

ORDER: **S7589 of 2000**  
**The costs of the application filed on 5 June 2002 and the  
re-hearing of the originating application filed on 31  
August 2000 against the second respondent be each  
party's costs in proceeding S8117 of 2001.**  
**S8117 of 2001**  
**The costs of the application filed on 23 May 2002 be each  
party's costs in the proceeding.**

CATCHWORDS: CORPORATIONS LAW - COSTS - application for joinder  
of party and application for extension of time by liquidators  
to bring proceeding against creditor - application for  
summary judgment by creditor - exercise of discretion - costs

of the applications to be each party's costs in the proceeding commenced by liquidators against creditor

*Corporations Act 2001 (Cth)*

*Greig & Anor as liqs of Australian Building Industries Pty Ltd v Australian Building Industries Pty Ltd (in liq)* [2002] QSC 138

*Greig & Anor v Australian Building Industries Pty Ltd (in liq)* [2002] QSC 298

COUNSEL: M Gynther for the applicants in S7589 of 2000 and the plaintiffs in S8117 of 2001  
PG Bickford for the second respondent in S7589 of 2000 and the defendant in S8117 of 2001

SOLICITORS: Jones King for the applicants in S7589 of 2000 and the plaintiffs in S8117 of 2001  
Clayton Utz Lawyers for the second respondent in S7589 of 2000 and the defendant in S8117 of 2001

- [1] **MULLINS J:** When I published my reasons in *Greig & Anor v Australian Building Industries Pty Ltd (in liq)* [2002] QSC 298 on 1 October 2002, I invited submissions on costs. Written submissions on behalf of the liquidators were received on 9 October 2002. Written submissions on behalf of Stramit were received on 15 October 2002.
- [2] The hearing on 13 June 2002 involved the re-arguing by the liquidators of their application for an extension pursuant to s 588FF(3)(b) of the *Corporations Act 2001 (Cth)* on notice to Stramit and, as a preliminary step, an application to join Stramit as a respondent to that application for extension. This resulted from the fact that the order for extension which I had made on the liquidators' *ex parte* application for extension which affected Stramit's interests was subsequently set aside by Chesterman J on 16 May 2002: *Greig & Anor as liqs of Australian Building Industries Pty Ltd v Australian Building Industries Pty Ltd (in liq)* [2002] QSC 138.
- [3] It is submitted on behalf of the liquidators that the application for the joinder of Stramit and the re-argument of the original application on notice on 13 June 2002 might have been disposed of under r 666 of the *UCPR*, but Stramit elected to contest the applications, raising a number of technical matters in opposition to being joined as a party to the original application and in respect of the extension, in respect of which Stramit was unsuccessful.
- [4] On the basis that no criticism was made of the liquidators' conduct either before Chesterman J or in my reasons for judgment and that it could not be described as a "usual" case of liquidators' seeking an indulgence from the court, it is submitted by the liquidators that Stramit should be ordered to pay the costs of the appearance of counsel for the applicants at the hearing on 13 June 2002 and the liquidators' supplementary submissions (Ex 5 in S7589 of 2000) and that the remaining costs be each party's costs in proceeding S8117 of 2001.

- [5] It is argued on behalf of Stramit that the liquidators were successful on one basis only, pursuant to s 81 of the *Supreme Court Act* 1991, in joining Stramit to the application for extension and that the other bases that were foreshadowed in the application for joinder were unsuccessful. It is also argued on behalf of Stramit that it was necessary for the liquidators to make the application to join Stramit to the application for extension and to re-argue that application for extension in light of the decision of Chesterman J. As the liquidators were seeking an indulgence from the court, Stramit submits the liquidators ought to be ordered to pay Stramit's costs of the application on the standard basis.
- [6] Stramit submits that it was reasonable for Stramit to bring the application for summary judgment in the circumstances where the continuance of proceeding S8117 of 2001 depended on the liquidators' success in obtaining the extension necessary to bring that proceeding and that each party's costs of Stramit's application should be that party's costs in proceeding S8117 of 2001. The submission is also made on behalf of Stramit that little time at the hearing on 13 June 2002 was directed to the summary judgment application.
- [7] In dealing with the application before him to set aside the order for extension insofar as it affected Stramit, Chesterman J observed at para [35] that there was an element of opportunism in Stramit's application. That continued in the opposition of Stramit to the orders sought by the liquidators during the hearing on 13 June 2002. It is understandable, however, why Stramit would not have consented to the orders sought by the liquidators (as is suggested by the liquidators in their submissions on costs), when the issues that were raised by both the liquidators' applications and Stramit's opposition to them were complex and the outcome of the applications was not necessarily apparent.
- [8] This was an unusual case of an indulgence being sought from the court in that it was for an extension in respect of proceeding S8117 of 2001 which had been commenced, as a result of an earlier order for an extension which had been set aside on Stramit's application, after Stramit's solicitors became aware of the decision in *Brown v DML Resources Pty Ltd (in liq) (No 2)* (2001) 39 ACSR 219. In all the circumstances, I consider the appropriate order for costs in respect of the applications determined on 13 June 2002 is that the costs should be determined by the result in proceeding S8117 of 2001. The orders which I make are:
- S7589 of 2000  
The costs of the application filed on 5 June 2002 and the re-hearing of the originating application filed on 31 August 2000 against the second respondent be each party's costs in proceeding S8117 of 2001.
- S8117 of 2001  
The costs of the application filed on 23 May 2002 be each party's costs in the proceeding.