

SUPREME COURT OF QUEENSLAND

CITATION: *Knapp v Hinchliffe* [2004] QSC 345

PARTIES: **GERALDINE MARY KNAPP**
(plaintiff/respondent)
v
DAVID HINCHLIFFE
(defendant/applicant)

FILE NO/S: S8342 of 1999

DIVISION: Trial Division

PROCEEDING: Written Submissions

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 8 October 2004

DELIVERED AT: Brisbane

HEARING DATE: Written Submissions

JUDGE: McMurdo J

ORDER: **The plaintiff is ordered to pay the defendant's costs of and incidental to the application to be assessed on a standard basis**

CATCHWORDS: PROCEDURE – COSTS – GENERAL RULE – COSTS FOLLOW THE EVENT – COST OF ISSUES – where respondent submits success of application is limited – whether application succeeded in substance – whether the applicant should have all of his costs

COUNSEL: M P Amerena for the applicant
R J Anderson for the respondent

SOLICITORS: King & Company for the applicant
F.G. Forde, Knapp & Marshall for the respondent

[1] **McMURDO J:** On 22 September I gave judgment on the defendant's application which attacked various parts of the Reply and its particulars. The plaintiff asked for time to consider that judgment before making her submissions as to costs. Subsequently I received a written submission from each party as to costs. The defendant seeks an order that he have the costs of the application. The plaintiff submits that the defendant should have two-thirds of his costs.

[2] Most of the defendant's submissions were successful, and most of the parts of the pleadings which he attacked were struck out. The plaintiff submits that there were

some 16 points involved on which the defendant succeeded in relation to 10 of them. Then there are alternative analyses offered by the plaintiff to show what is said was the limited success of the application.

- [3] For all of that, an extensive hearing was required because, as I have concluded, the plaintiff's pleadings and particulars were irrelevant or in non-compliance of the rules in several respects. To the extent that the defendant was unsuccessful on some points, it does not seem to me that those matters are likely to have significantly affected the cost to him making it what was otherwise a necessary application. In the circumstances of this case, it is just that he should have all of his costs, and should not be penalised because he advanced points which, although arguable, were ultimately unsuccessful. In substance, the application succeeded.
- [4] The plaintiff is ordered to pay the defendant's costs of and incidental to the application to be assessed on a standard basis.