

SUPREME COURT OF QUEENSLAND

CITATION: *WM George Pty Ltd v Kings Parking Corporate Pty Ltd*
[2004] QSC 087

PARTIES: **WM GEORGE PTY LTD ACN 009 831 038 as trustee**
(applicant)
v
KINGS PARKING CORPORATE PTY LTD
ACN 010 709 065
(respondent)

FILE NO: SC No 1809 of 2004

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 13 April 2004

DELIVERED AT: Brisbane

HEARING DATE: On papers

JUDGE: Mackenzie J

ORDER: **Application for indemnity costs refused, with costs on the standard basis .**

CATCHWORDS: PROCEDURE – COSTS – RECOVERY OF COSTS – indemnity – where clause for solicitor-client costs – where clause governed determination of lease – whether transactions between parties amounted to a determination

COUNSEL: P W Hackett for the applicant
P H Morrison QC for the respondent

SOLICITORS: N R Barbi for the applicant
Gadens Lawyers for the respondent

[1] **MACKENZIE J:** The successful applicant seeks indemnity costs in lieu of the order pronounced for standard costs when judgment was delivered in this matter on 26 March 2004 ([2004] QSC 061). The facts of the proceeding are set out fully in those reasons for judgment.

[2] The application is founded upon cl 16.01 of the original contract, relevantly as follows:

“(b) The Lessee shall upon demand by the Lessor pay all reasonable costs (as between Solicitor and client) and

expenses incurred by the Lessor in relation to any lawful determination of this Lease the re-entry by the Lessor into the demised premises the surrender of this Lease (including any stamp duties and registration fees thereon) and the granting or obtaining of any consents by the Lessor.”

- [3] “Lease” is defined in the original agreement as the lease or tenancy that exists between the lessor and lessee in relation to the premises (of whatever nature and whether at law or in equity, as evidenced by the lease document).
- [4] The applicant submits that it is entitled under this clause to what it says is the equivalent of solicitor and client costs in the present rules, indemnity costs. The respondent submits that the clause does not govern the case since it falls within none of the four categories in cl 16.01(b) which give rise to an entitlement to solicitor and client costs.
- [5] The respondent’s argument is that cl 16.01(b) is concerned with determination of a lease and associated steps. The present case is concerned not with that, but a claim, which proved unsuccessful, that negotiations for a new lease had resulted in a concluded agreement. The original lease had expired by effluxion of time.
- [6] As a matter of construction, I prefer the respondent’s version. The application for indemnity costs is refused with costs on the standard basis. The order pronounced on 26 March 2004 remains in force.