

SUPREME COURT OF QUEENSLAND

CITATION: *Bundaberg Sugar Ltd & Anor v Isis Central Sugar Mill Co Ltd* [2006] QSC 388

PARTIES: **BUNDABERG SUGAR LIMITED ACN 077 102 526**
(first plaintiff)
and
BRANCHVALE PTY LTD ACN 061 770 152
(second plaintiff)
v
**ISIS CENTRAL SUGAR MILL COMPANY LIMITED
ACN 009 567 078**
(defendant)

FILE NO: BS1591 of 2005

DIVISION: Trial

PROCEEDING: Trial

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 15 December 2006

DELIVERED AT: Brisbane

HEARING DATE: 25, 26 and 30 October 2006

JUDGE: Chesterman J

ORDER: **The defendant is to pay one quarter of the plaintiffs' costs of the action, to be assessed on the standard basis.**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – FAILURE IN PORTION OF A CASE – plaintiffs partially successful at trial but obtained limited relief – whether plaintiff entitled to recover costs of its action

Bundaberg Sugar Ltd & Anor v Isis Central Sugar Mill Co Ltd [2006] QSC 358, considered

COUNSEL: Mr D F Jackson QC with him Ms S Brown for the plaintiffs
Mr J C Bell QC with him Mr D A Kelly for the defendant

SOLICITORS: Minter Ellison for the plaintiffs
Corrs Chambers Westgarth for the defendant

- [1] Following the delivery of judgment in this matter the parties delivered their respective submissions as to the appropriate order for costs. Both plaintiffs and defendant submit that they were successful in the litigation and should have an order for costs in their favour. In a sense both sets of submissions are correct which means, of course, that in a sense both are wrong.

- [2] The plaintiffs point to the fact that they obtained a declaration favourable to them and that the defendant had resisted all claims for relief.
- [3] The defendant points out that the plaintiffs substantially failed. They were unable to persuade the Court that the articles in question were invalid; or that the defendant had no power to forfeit shares on the 'ex-supplier ground'; and that the articles did not confer a right of forfeiture on that ground. The relief obtained by the plaintiffs was quite limited.
- [4] The defendant asks for costs on the basis that it was substantially successful and that the plaintiffs lost the case they presented.
- [5] This is true, but it is also true that the plaintiffs took a case to court and obtained some relief which the defendant resisted. Their rights were vindicated to some extent by the proceedings.
- [6] It would not in these circumstances be fair to require the plaintiffs to pay the defendant's costs because, as I say, they did obtain a judgment of some benefit to them. On the other hand it would not be fair to the defendant, which substantially won the points litigated, to require it to pay the plaintiffs' costs.
- [7] It is often difficult to strike the right balance when determining costs. Perfect justice is often unattainable. In the present case the choices seem to me to lie between making no order as to costs, and requiring the defendant to pay a small part of the plaintiffs' costs.
- [8] I think the Court should consider with some solicitude the position of a plaintiff who has to go to court to obtain redress. That consideration tips the balance in favour of requiring the defendant to pay something towards the plaintiffs' costs.
- [9] Accordingly I order the defendant to pay one quarter of the plaintiffs' costs of the action, to be assessed on the standard basis.
- [10] This order in no way affects previous orders for costs which have been made in the proceedings.