

SUPREME COURT OF QUEENSLAND

CITATION: *Reed Construction (Q) P/L v Dellsun P/L* [2009] QSC 274

PARTIES: **REED CONSTRUCTION (QLD) PTY LTD**
(applicant)
v
DELLSUN PTY LTD
(respondent)

FILE NO/S: 2556 of 2009

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 7 September 2009

DELIVERED AT: Brisbane

HEARING DATE: 4 September

JUDGE: Martin J

ORDER: **The respondent is to pay the applicant's costs of and incidental to the application on an indemnity basis**

CATCHWORDS: *Colgate Palmolive Co v Cussons Pty Ltd* (1993) 46 FCR 225

COUNSEL: G D Beacham for the applicant
B Wessling-Smith for the respondent

SOLICITORS: Holding Redlich for the applicant
O'Neills Solicitors for the respondent

- [1] The applicant seeks an order that its costs be paid on an indemnity basis. The principal argument is that the respondent should have been aware at an early stage that there was a genuine dispute about the sum the subject of the statutory demand. In an affidavit of David Anthony Mackley (filed 10 March 2009) there is a substantial amount of material which demonstrates that there was, at least for the purposes of this application, a clear dispute about the amount claimed by the respondent. The respondent should have realised that at the time.
- [2] The applicant, on five separate occasions, offered to settle the application by the respondent withdrawing the statutory demand and paying the applicant's costs.
- [3] In *Colgate Palmolive Co v Cussons Pty Ltd*,¹ Sheppard J said that one of the circumstances in which it is open to a court to exercise the discretion in favour of an

¹ (1993) 46 FCR 225

award of indemnity costs is where there has been a wilful disregard of known facts or clearly established law. In this case, the respondent knew from early March that the applicant did genuinely dispute the claim. Further, the respondent should have been aware that there was an established line of authorities (dealing with the question of the effect of an adjudicator's decision in New South) Wales which was contrary to the case advanced by them.

- [4] This is a case in which the respondent should have, at least upon receipt of Mr Mackley's affidavit, withdrawn the statutory demand. Its pursuit of the demand was unreasonable and was sufficient, in these circumstances, for the following order to be made.
- [5] The respondent is to pay the applicant's costs of and incidental to the application on an indemnity basis.