

SUPREME COURT OF QUEENSLAND

CITATION: *Haddow v Simala & Anor* [2010] QSC 293

PARTIES: **ARCH ALEXANDER HADDOW**
(plaintiff)
v
FLORIAN SIMALA
(first defendant)
SHARON ANN SIMALA
(second defendant)

FILE NO/S: SC No 5784 of 2010

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 12 August 2010

DELIVERED AT: Brisbane

HEARING DATE: On the papers

JUDGE: Chief Justice

ORDER: **Numbered paragraph 2 of the orders made on 9 July 2010 is amended to delete the word “standard”, and to substitute in lieu thereof, the word “indemnity”.**

CATCHWORDS: PROCEDURE – COSTS – RECOVERY OF COSTS – whether costs should be assessed on the indemnity basis
Di Carlo v Dubois & Ors [\[2002\] QCA 225](#), applied

COUNSEL: Plaintiff in person
D A Skennar for the first and second defendants

SOLICITORS: Chris Reeve and Co Solicitors for the first and second defendants

- [1] **CHIEF JUSTICE:** In giving judgment on 9 July 2010, I ordered that the plaintiff pay the defendants’ costs, to be assessed on the standard basis, but reserved to the defendants the right to seek an order that they be assessed on the indemnity basis.
- [2] I have since received written submissions from all parties.
- [3] The defendants seek an indemnity assessment on the ground that the plaintiff, if properly advised, should have known that the application could not succeed, because the second defendant did not consent to a transfer of the mortgage, because the plaintiff’s entitlement to redeem was not established, and because the plaintiff

did not establish an entitlement to have the first defendant restrained from exercising his powers as mortgagee. The defendants also question the purpose motivating the plaintiff.

- [4] On the other hand, the plaintiff disputes that his application was without merit. Most of his four page written submission quarrels with the correctness of the judgment. He points out that I did not discuss his contention that recovery of some of the interest claimed by the first defendant would be barred because of the lapse of time. It was not necessary for me to go further than I did in paras six and eight of my reasons. In para eight, I refer to the current District Court judgment which provides for the payment of interest to the first defendant as mortgagee, contrary to the plaintiff's contention before me. The plaintiff's submissions also raise factual contentions not disclosed in the evidence before me.
- [5] In my view, the features upon which the defendants rely do put the case into a sufficiently special category to warrant an assessment on the indemnity basis. See *di Carlo v Dubois & Ors* [2002] QCA 225, para 37.
- [6] Numbered paragraph 2 of the orders made on 9 July 2010 is amended to delete the word "standard", and to substitute in lieu thereof, the word "indemnity".