

SUPREME COURT OF QUEENSLAND

CITATION: *Coco v Ord Minnett Ltd* [2012] QSC 343

PARTIES: **SALVATORE COCO**
(applicant/defendant)
v
ORD MINNETT LIMITED ACN 002 733 048
(respondent/plaintiff)

FILE NO/S: BS 4530/11

DIVISION: Trial

PROCEEDING: Application

DELIVERED ON: 14 November 2012

DELIVERED AT: Brisbane

HEARING DATE: Written submission

JUDGE: Jackson J

ORDER: **The respondent pay the applicant's costs of the application to be assessed**

CATCHWORDS: PROCEDURE – COSTS – JUDICIAL DISCRETION – where defendant applied to strike out statement of claim – where plaintiff made concessions in argument – where statement of claim not struck out but substantial amendments directed – where plaintiff contended that application to strike out statement of claim in its entirety had failed – where general rule is that costs follow the event – whether discretion should be exercised to order otherwise

Uniform Civil Procedure Rules 1999 (Qld), rr 5, 367, 681

McGuirk v University of New South Wales (No 2) [2011] NSWSC 361, cited

COUNSEL: R Ashton for the applicant/defendant
S Shearer for the respondent/plaintiff

SOLICITORS: Sparke Helmore for the applicant/defendant
Romans & Romans for the respondent/plaintiff

[1] The question for consideration is the order for costs to be made upon the disposition of the application to strike out the statement of claim. On 26 October 2012, I delivered reasons and made an order directing the respondent plaintiff to amend the statement of claim as he may be advised in accordance with those reasons. I invited a brief written submission on costs from the respondent if it opposed the order

which I was provisionally minded to make, namely that the respondent pay the costs of the application to be assessed.

- [2] The respondent submits that the applicant defendant failed in the application to strike out the fourth amended statement of claim in its entirety “notwithstanding defects in the statement of claim and concessions by the respondent that amendments to it are necessary”.
- [3] As to the concessions, they were made in the course of argument. I do not see that there is any reason why they suggest that the applicant should not have brought an application in the first place. Secondly, although the orders made did not include an order to strike out the statement of claim in its entirety, the court has a discretion as to the order to be made having regard to the purposes of the *UCPR* as reflected in *UCPR* 5 and the scope of the court’s power to make directions under *UCPR* 367.
- [4] In any event, the extent of the necessary amendments, as set out in the reasons, shows that it is only in the most technical sense that the respondent could contend that it “successfully resisted” the application. In my view, if it be necessary for the court to exercise a discretion to order otherwise than costs follow the event pursuant to *UCPR* 681, the circumstances of the present case would justify doing so.
- [5] In my view it is inaccurate for the respondent to contend that it “had no alternative other than to resist an application to strike out an entire statement of claim”. On the contrary, the respondent could readily have responded to the applicant’s complaints about the pleading, a number of which were specifically dealt with in the reasons for the decision, by making appropriate amendments or agreeing to make amendments to the pleading before the application was heard and was required to be dealt with.
- [6] In my opinion, due to the substantial success of the applicant in the attacks that it made on the pleading, the appropriate order is that the respondent pay the costs of the application to be assessed. The discretion as to costs may justify another order in appropriate cases.¹ But in this case, I consider that the surgery required for the statement of claim is major and the plaintiff respondent should pay the costs of the application to be assessed.

¹ Eg. *McGuirk v University of New South Wales (No 2)* [2011] NSWSC 361 at [26].