

# SUPREME COURT OF QUEENSLAND

CITATION: *Bechara v Sotrip Pty Ltd (in liq) (No 2) & Ors* [2013] QSC 267

PARTIES: **BUDDY BECHARA**  
(plaintiff)  
v  
**SOTRIP PTY LTD (IN LIQUIDATION)**  
ACN 085 132 378  
(first defendant)  
and  
**RELIANCE FINANCIAL SERVICES PTY LTD**  
ACN 003 478 966  
(second defendant)  
and  
**SOTRIP NSW PTY LTD**  
ACN 139 174 744  
(third defendant)  
and  
**RELIANCE FINANCIAL SERVICES NSW PTY LTD**  
ACN 131 889 766  
(fourth defendant)

FILE NO/S: BS 9372 of 2006

DIVISION: Trial Division

PROCEEDING: Civil Trial – Further Order

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 30 September 2013

DELIVERED AT: Brisbane

HEARING DATE: Written submissions

JUDGE: Philip McMurdo J

ORDER: **The plaintiff pay the costs of the third and fourth defendants, including reserved costs (if any).**

CATCHWORDS: PROCEDURE – COSTS – DEPARTING FROM THE GENERAL RULE – OTHER CASES – OTHER CASES – where plaintiff entirely successful in its claim – where plaintiff's claim originally against first defendant – where plaintiff succeeded in having first defendant pay money into court – where that money paid into court will be ultimately beneficial to the third and fourth defendants – where plaintiff seeks to have the costs of all parties paid out of the funds paid into court – where plaintiff ultimately found to have brought an unmeritorious claim and had no interest in the funds paid

into court – where plaintiff also complains of conduct by the defendants during the proceeding – where the conduct complained of has already resulted in costs orders against the defendants – whether an order for costs should be made departing from the general rule

COUNSEL: No appearance for the plaintiff, the plaintiff's submissions were heard on the papers  
 No appearance for the first and second defendants  
 No appearance for the third and fourth defendants, the third and fourth defendants' submissions were heard on the papers

SOLICITORS: Patane Lawyers for the plaintiff  
 No appearance for the first and second defendants  
 Proctor & Associates for the third and fourth defendants

- [1] This judgment concerns the costs of the proceedings between the plaintiff and the third and fourth defendants. The plaintiff's claim went to trial only against those defendants. The plaintiff was entirely unsuccessful.<sup>1</sup>
- [2] The third and fourth defendants seek an order that the plaintiff pay their costs, including any reserved costs. The plaintiff submits that the costs of both the plaintiff and the third and fourth defendants should be paid out of the funds which are presently in court, in priority to any other distribution. Alternatively, he submits that there should be no order as to costs.
- [3] The starting point, of course, is that the plaintiff's claim has failed and the costs should follow the event unless there are circumstances warranting some other order. The plaintiff says that there are unusual circumstances here, by the way in which the litigation developed. Originally the contest was between the plaintiff and the first defendant. The plaintiff succeeded in having an amount of \$660,000 from the proceeds of sale of the subject land paid into court, by an order made in July 2008. It was not until September 2010 that the third and fourth defendants were joined as parties to this proceeding. The payment into court of those moneys was ultimately beneficial to the third and fourth defendants because, subject to claims by the first defendant or its liquidators, those moneys will be paid out to one or both of them.
- [4] The plaintiff's submission appears to be that although, according to my judgment, he was never entitled to any share of the proceeds of sale, by his actions those proceeds or some of them have provided the fund which is in court so that he should be reimbursed from that fund for his own costs. I accept that his commencement of this proceeding and steps which he took to July 2008 were ultimately beneficial to the third and fourth defendants. But consistently with my findings in the principal judgment, he did so upon an unmeritorious claim. And he persisted in that claim thereby causing the third and fourth defendants to incur costs. It would be wrong to treat this case as analogous to one where there are several persons interested in a fund. The plaintiff, in truth, has had no interest in it at any stage.
- [5] The other argument by the plaintiff is to the effect that there were some respects in which the third and fourth defendants conducted their defence in an unsatisfactory manner. The plaintiff is rightly critical of the defendants' conduct at certain stages

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<sup>1</sup> *Bechara v Sotrip Pty Ltd (in liq) & Ors* [2013] QSC 100.

in the proceeding. But for the most part, that conduct has already had consequences in relation to costs. There were orders made in the plaintiff's favour against the third and fourth defendants on occasions which are now the subject of particular criticism by the plaintiff, in September 2010, February 2011 and May 2012.

- [6] In my conclusion, there are no circumstances which should result in a departure from the normal rule that costs follow the event. The plaintiff will be ordered to pay the costs of the third and fourth defendants, including reserved costs (if any).