

SUPREME COURT OF QUEENSLAND

CITATION: *Sunwater Ltd v Drake Coal Pty Ltd & Anor* [2015] QSC 332

PARTIES: **SUNWATER LTD**
ACN 131 034 985
(Applicant)
v
DRAKE COAL PTY LTD
ACN 138 221 600
(First Respondent)
BYERWEN COAL PTY LTD
ACN 133 357 632
(Second Respondent)

FILE NO/S: Brisbane Number 6430 of 2015

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 2 December 2015

DELIVERED AT: Brisbane

HEARING DATE: 22 October 2015

JUDGE: Boddice J

ORDER: Order as per draft as amended

CATCHWORDS: PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND - PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – costs – where both the plaintiff’s application and the defendants’ application arose out of complaints surrounding the adequacy of the pleadings and the need for the joinder of additional parties – where the defendants’ approach to those complaints resulted in a large number of the issues sought to be agitated in those applications ultimately being the subject of consent orders – where the plaintiff’s application was dismissed – how costs should be awarded
Uniform Civil Procedure Rules 1999 (Qld)

COUNSEL: A Pomerence QC with L Clark for the plaintiff
R A Holt with J Chapple for the defendants

SOLICITORS: Thomson Geer for the plaintiff
Holding Redlich for the defendants

- [1] On 12 November 2015, I ordered that the plaintiff's application, filed 2 October 2015, be dismissed. The parties were directed to provide orders in respect of that application, and the defendant's application filed 16 October 2015, the outcome of which had been agreed between the parties. The parties were also directed to file written submissions in respect of the costs of the applications, in the event no agreement was reached in relation to those costs.

Submissions

- [2] The parties have now filed submissions in respect of costs.
- [3] The plaintiff submits the defendants should pay its costs of its application, filed 2 October 2015, and of the defendants' application, filed 16 October 2015. The conduct of the defendants, in filing and serving a defective defence and counterclaim, and in failing to properly respond to complaints raised in relation thereto, led the plaintiff to reasonably bring the application, filed 2 October 2015, only part of which was ultimately argued, with the balance being the subject of agreed orders.
- [4] The defendant should also pay the plaintiff's costs of the application, filed 16 October 2015, because the orders agreed between the parties involved an indulgence to remedy deficiencies in the defendant's constitution of the proceedings at the outset.
- [5] The defendants submit the plaintiff ought to pay their costs of the application, filed 2 October 2015, as that part of the application which was agreed between the parties ought reasonably to have been agreed without the need for the filing of the application and the defendants were otherwise successful in resisting the relief sought in that application.
- [6] The defendants submit the appropriate order for costs in respect of the application filed on 16 October 2015 is costs in the proceedings. The relief sought in that application was ultimately the subject of consent orders. Consistently with the philosophy of the *Uniform Civil Procedure Rules 1999 (Qld)*, it ought to have been dealt with by consent without the need for an application. The plaintiff's position in relation thereto was unreasonable.

Discussion

- [7] Both the plaintiff's application, filed 2 October 2015, and the defendants' application, filed 16 October 2015, arose out of complaints surrounding the adequacy of the pleadings and the need for the joinder of additional parties. The defendants' approach to those complaints resulted in a large number of the issues sought to be agitated in those applications ultimately being the subject of consent orders.
- [8] Whilst there may have been some initial delay in that response, I am satisfied the defendants' response was neither unreasonable nor contrary to the philosophy of the *Uniform Civil Procedure Rules 1999 (Qld)*. Whilst the defendants were required to make application for the joinder of the additional parties, that joinder could have occurred by

consent, without the need for the preparation of significant material in relation to that application.

- [9] I am also satisfied, having regard to the state of the defendants' pleadings and the issues in dispute, that it was reasonable for the plaintiff to file its application of 2 October 2015. However, much of the relief sought in relation thereto was the subject of agreement and that part remaining in dispute was determined against the plaintiff.
- [10] Allowing for the reasonableness of the defendants' conduct, and the plaintiff's lack of success in that aspect of the matter remaining in dispute, I am satisfied that it is appropriate, in the exercise of my discretion, to order that each party's costs in each application be that party's costs in the proceeding. Such an order will ensure the party that is ultimately successful in the proceeding will receive the costs of the applications filed on 2 and 16 October 2015.

Orders

- [11] The parties have provided draft orders and directions, the terms of which are agreed except for paragraphs 5 and 7, which deal with the costs of the defendants' application, filed 16 October 2015 and the plaintiff's application, filed 2 October 2015. That draft should be amended, so that order 5 reads "Each party's costs of the application filed 16 October 2015 is that party's costs in the proceeding", and order 7 reads "Each party's costs of the application filed 2 October 2015 is that party's costs in the proceeding".
- [12] I make orders in terms of the amended draft, which I initial and place with the papers.