

SUPREME COURT OF QUEENSLAND

CITATION: *Christian v Cooper (No 2)* [2020] QSC 226

PARTIES: **JOHN CHRISTIAN**
(Plaintiff)
v
TIMOTHY COOPER
(Defendant)

FILE NO/S: BS No 1780 of 2017

DIVISION: Trial Division

PROCEEDING: Trial

DELIVERED ON: 27 July 2020

DELIVERED AT: Brisbane

HEARING DATE: 24 July 2020

JUDGE: Bowskill J

ORDERS: **The plaintiff pay the defendant's costs of the proceeding, including any reserved costs, on the standard basis, excluding the defendant's costs of the hearing on 19 and 26 June 2020**

CATCHWORDS: PARTNERSHIP – GENERALLY – FACTS AND AGREEMENTS EVIDENCING PARTNERSHIP – PARTNERSHIP IN FACT – CONSIDERATION OF INTENTION OR RELATIONSHIP — costs of the proceeding

COUNSEL: A J H Morris QC for the plaintiff
D de Jersey QC for the defendant

SOLICITORS: Australian Law Partners for the plaintiff
Dundas Lawyers for the defendant

- [1] On 24 July 2020 I published my reasons for ordering that the plaintiff's claim in this proceeding be dismissed. I proceeded to hear submissions as to costs at that time.
- [2] Subject to what is discussed below, the plaintiff did not oppose an order giving effect to the usual outcome, that costs follow the event: r 681 of the *Uniform Civil Procedure Rules*.
- [3] The defendant relied upon a *Calderbank* offer made by letter dated 21 October 2019, in submitting that the plaintiff ought to be ordered to pay his costs on the indemnity basis, from the day after the expiry of that offer. I rejected that submission, as the offer which was made was expressly left open for a short period of time (four days); and despite there being ample opportunity to have made a formal offer under the UCPR,

none was made. In the circumstances, the costs should be assessed on the standard basis.

- [4] The plaintiff submitted that the order for costs should be limited/reduced in two respects, arising from the defendant's failure to make proper disclosure of certain documents, in particular, those relating to his betting activities after May 2017. The plaintiff submitted that the defendant's failure in this regard unnecessarily extended the length of the trial. Consequently, the defendant should not recover the costs thrown away by the extra hearing time; and in fact he should pay the plaintiff's costs thrown away.
- [5] The trial in this matter was originally listed for four days. It extended into a fifth and then a sixth day (although only parts of those days).
- [6] I accept that the sixth day of the hearing, 26 June 2020, would not have been required but for the defendant's failure to disclose the documents earlier. As far as the fifth day of the hearing is concerned, 19 June 2020, that was only of short duration – one hour and 45 minutes – and analysis of the transcript shows that it was also mostly (but not completely) concerned with further cross-examination of Mr Cooper, in relation to documents not disclosed by him, and documents produced in response to subpoena. It is difficult to conclude with certainty that the trial would have been finished at the end of day four, but for this issue. However, for present purposes I am prepared to assume that it would have.
- [7] I accept that, given the manner in which I determined the issue as to characterisation of the arrangement, the issue of Mr Cooper's gambling activities after June 2016 (and, for that matter, May 2017) were not ultimately of significance. However, I do accept that there was an obligation to disclose, having regard to the pleaded issues, and that Mr Cooper's failure to do so at an earlier time resulted in additional time being required for the trial.
- [8] I am not persuaded that it is appropriate to make an order that the defendant pay any part of the plaintiff's costs, in circumstances where the plaintiff instituted this proceeding, defined the issues in the way that he did in his pleading, and has been wholly unsuccessful. However, I am persuaded that, reflecting the consequences of the defendant's failure to disclose, the costs recoverable by the defendant should be reduced so as to exclude the costs of the hearing on 19 and 26 June 2020.
- [9] I therefore order that the plaintiff pay the defendant's costs of the proceeding, including any reserved costs, excluding the defendant's costs of the hearing on 19 and 26 June 2020, to be assessed on the standard basis.