

MAGISTRATES COURT OF QUEENSLAND

CITATION: *Sterling Law Pty Ltd t/as Sterling Law v Murdock* [2020]

PARTIES: **Sterling Law Pty Ltd**
ABN 64 165 643 881
t/as Sterling Law
(Plaintiff)

v

Joanne Murdock
(Defendant)

FILE NO/S: M68 of 2019

DIVISION: Civil

PROCEEDING: Claim

ORIGINATING
COURT: Brisbane

DELIVERED ON: 13 November 2020

DELIVERED AT: Brisbane

HEARING DATE: On the papers

MAGISTRATE: Magistrate Hay

ORDER: **1. The defendant pay the plaintiff's costs of and incidental to the application filed 9 December 2019 on an indemnity basis to be assessed, if not agreed.**

COUNSEL: P. G. Jeffrey for the Plaintiff/Respondent

SOLICITORS: Sterling Law for the Plaintiff/Respondent

Rose Litigation for the Defendant/Applicant

- [1] Following a decision dismissing the defendant's second application to assess legal professional costs,¹ ('**Second Application**') the parties were invited to make submissions on the question of costs and the calculation of interest, if not agreed.

Decision on Costs

- [2] The starting point is that costs are in the discretion of the court, but will usually follow the event unless the court orders otherwise: r. 681(1) of the *Uniform Civil Procedure Rules 1999 (Qld)* (UCPR).

¹ Application filed 14 November 2019.

- [3] As McHugh J said in *Oshlack v Richmond River Council*:²

“Costs are not awarded to punish an unsuccessful party. The primary purpose of an award of costs is to indemnify the successful party. If the litigation had not been brought, or defended, by the unsuccessful party, the successful party would not have incurred the expense which it did. As between the parties, fairness dictates that the unsuccessful party typically bears the liability for the costs of the unsuccessful litigation. As a matter of policy, one beneficial by-product of this compensatory purpose may well be to instil in a party contemplating commencing, or defending, litigation a sober realisation of the potential financial expense involved...”

- [4] The defendant seeks an order that she pay the plaintiff’s costs on a standard basis fixed in the sum of \$2,519.91. This order is sought, despite her contention that the High Court’s decision in *Bell Lawyers v Pentelow*³ is authority for the proposition that the *Chorley exception* will no longer apply to solicitors, including incorporated solicitors, acting on their own behalf. I accept the plaintiff’s submission that the defendant’s contention on this point is misconceived and contrary to the High Court’s findings concerning incorporated legal practices.⁴

- [5] The plaintiff seeks an order that the defendant pay its costs of and incidental to the application filed 14 November 2019 on a *“full indemnity basis by reference to the costs agreement between the parties when the plaintiff was the defendant’s solicitor”*.⁵

- [6] In *Amos v Monsour Legal Costs*⁶ the Court of Appeal unanimously observed:

“...indemnity costs are exceptional and are awarded only for good reason, here, because Mr Amos’s conduct of the litigation effectively amounted to an abuse of process entitling Monsour P/L to be fully compensated for its reasonable expenses in defending the action. Sub-rule 704(3) in its terms requires the consideration of the scale of fees prescribed for the court (r 704(3)(a)); the costs agreement between the party in whose favour the costs order is made (r 704(3)(b)) and the charges ordinarily payable by a client to a solicitor for the work (r 704(3)(c)). Other matters may also be relevant in a particular case. UCPR r 704(3)(a) by necessary implication requires the consideration of an element of proportionality.”

- [7] I accept that an order for costs on indemnity basis ought not be made by a court unless it is satisfied that special circumstances warrant a departure from the usual order for costs on a standard basis.⁷ For the reasons set out below, I am satisfied that those special circumstances are present in this matter.

- [8] The plaintiff submits that it is entitled to its costs on an indemnity basis because:

² (1998) 193 CLR 72 at 97. See also *Laverick v Westpac Banking Corporation* [2020] QSC 340 per Bowskill SCJ.

³ [2019] HCA 29.

⁴ Plaintiff’s submissions at [40] – [42]. See also *Bennett & Philp Lawyers v Winn* [2019] QCA 196.

⁵ Plaintiff’s submissions at [1].

⁶ (2008) 1 Qd R 304.

⁷ *Keswick Developments Pty Ltd v Keswick Island Pty Ltd & Ors.* [2009] QSC 59. See also *Colgate-Palmolive Company v Cussons Pty Ltd* [1993] FCA 536.

1. The Second Application was brought:
 - (a) in wilful disregard of known facts or clearly established law;
 - (b) in reliance upon false or misleading evidence;
 - (c) for some ulterior motive/s.⁸
2. The defendant's refusal of the plaintiff's reasonable *Calderbank* offer was imprudent.⁹

[9] I accept all of those submissions. They are supported on the uncontested evidence and the findings of this court when dismissing the Second Application. I further find that *Calderbank* offer was reasonable in its terms and genuinely made. I accept it was imprudent of the defendant to have rejected it.

[10] I also find that the Second Application gave rise to the need for extensive affidavit material and complex legal argument to address the contentions raised by the defendant in support of it. Given my findings as to the defendant's wilful disregard of known facts and clearly established law, particularly in light of the express comments made by his Honour Judge Porter in *Murdoch v Sterling Law (Qld) Pty Ltd*,¹⁰ I accept the plaintiff's submission that costs should be assessed on an indemnity basis.¹¹

[11] However I reject the plaintiff's submissions concerning 'full' indemnity costs made in reliance upon the decision in *Amos v Monsour Legal Costs*.¹² In that matter the Court of Appeal accepted that regard should be had to the legal costs Monsour Legal Costs had incurred with its own solicitors. That decision is distinguishable from the present circumstances as the plaintiff here has not entered into a costs agreement with itself. Accordingly, there is no appropriate costs agreement to have regard to. I find that the agreement between the plaintiff and the defendant is irrelevant for the purpose of assessing the costs awarded today.

Decision on interest

[12] The call for submissions on the calculation of interest pertained to any interest on the substantive claim. As I understand the written submissions there is no claim for that interest.

[13] The plaintiff's has now claimed interest on any award of costs made in its favour today. This is novel request and appears to be unsupported by legal precedent or reference to any relevant rule. As such I have not allowed interest on the costs awarded today.

ORDERS

[14] The defendant pay the plaintiff's costs of and incidental to the application filed 9 December 2019 on an indemnity basis to be assessed, if not agreed.

⁸ Plaintiff's submissions at [4] – [6] and

⁹ Plaintiff's submissions at [31] – [34]. See also *Calderbank v Calderbank* [1975] 3 All ER 333.

¹⁰ [2019] QDC 226 at [87]-[89].

¹¹ Plaintiff's submissions at [35] – [36]. See also *Amos v Monsour Legal Costs* (2008) 1 Qd R 304.

¹² *Supra*.

