

SUPREME COURT OF QUEENSLAND

CITATION: *The Proprietors Cathedral Village BUP 106957 v Cathedral Place Community Body Corporate* [2021] QCA 69

PARTIES: **THE PROPRIETORS CATHEDRAL VILLAGE
BUP 106957**
(applicant/appellant)
v
**CATHEDRAL PLACE COMMUNITY BODY
CORPORATE**
(respondent)

FILE NO/S: Appeal No 1690 of 2020
DC No 2754 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application for Extension of Time s 118 DCA (Civil) –
Further Orders

ORIGINATING COURT: District Court at Brisbane – [2019] QDC 210; [2019] QDC 238
(McGill SC DCJ)

DELIVERED ON: 9 April 2021

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Fraser and McMurdo JJA and Jackson J

ORDERS: **1. The respondent pay the appellant’s costs of the appeal.**
2. Pursuant to s 193 of the *Mixed Use Development Act 1993 (Qld)* those costs payable by the respondent to the appellant be paid from contributions levied against the members of the respondent apart from the appellant.

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND
TERRITORY COURTS – COSTS – GENERAL RULE:
COSTS FOLLOW THE EVENT – OTHER PARTICULAR
CASES AND MATTERS – where the appellant enjoyed
substantial success – where the entirety of the appellant’s
argument was not accepted – whether costs should follow the event

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND
TERRITORY COURTS – COSTS – GENERAL MATTERS
– GENERALLY – where the trial judge made an order for
costs – where appellant ought to have enjoyed more success at
first instance – whether the order for costs of the trial judge
should be altered

Mixed Use Development Act 1993 (Qld), s 193

COUNSEL: D Savage QC, with M Walker, for the applicant/appellant
M P Amerena for the respondent

SOLICITORS: PHV Law Solicitors and Consultants for the applicant/appellant
Grace Lawyers for the respondent

- [1] **FRASER JA:** I agree with the reasons for judgment of McMurdo JA and the orders proposed by his Honour.
- [2] **McMURDO JA:** This was one of two appeals arising from the same trial between the parties.¹ This judgment concerns the costs of the present appeal, the costs of the proceeding at first instance and the application of s 193 of the *Mixed Use Development Act* 1993 (Qld) (the Act).
- [3] This appeal was allowed and the matter was remitted for further hearing in the District Court, in order to determine the present respondent's claim, and the relevant part of the appellant's counterclaim. In summary, the appeal succeeded because this Court differed from the trial judge in the interpretation of relevant provisions of the Act concerning the levying and payment of contributions. Although the entirety of the appellant's argument was not accepted, the appellant did enjoy substantial success and there is no reason why costs of this appeal should not follow the event.
- [4] It is submitted for the respondent that there were documents unnecessarily included within the appeal record, and that the costs caused by their inclusion, however they might be assessed, ought not to be allowed. That submission should not be accepted. The litigation between these parties has already been unnecessarily complicated for more than a decade and that order would add another disproportionate expense to the finalisation of this case.
- [5] The next question is whether any order should be made disturbing the order for costs made in the District Court. On 29 November 2019, the trial judge ordered that the present respondent pay to the present appellant its costs of the claim and counterclaim incurred in 2019, and that there otherwise be no order as to costs. Those orders were the subject of detailed reasons given by the trial judge, in which his Honour summarised the unhappy history of this litigation and the respects in which each side had enjoyed some success, to a greater or lesser extent. His Honour declined to make any order under s 193 of the Act, apparently because the orders for costs which he made were a broad and practical solution to a complex history and set of circumstances.
- [6] As the judgment in the present appeal demonstrates, the appellant ought to have enjoyed more success than it did at first instance, and this calls for some consideration of whether the orders for costs made by the trial judge should be altered. However, in my view the better course is to let the present orders stand, given that there will be a further hearing and judgment in the District Court on that part of the case which is the subject of this appeal. It may be that the outcome of that further hearing will be a substantial money judgment in the appellant's favour. However, it may also transpire that the appellant recovers very little as a consequence of its success in this appeal. Should that second outcome eventuate, the trial judge's orders for costs would remain appropriate. I would make no order affecting the costs of the proceeding in the District Court.

¹ The other being decided by this Court in *Cathedral Place Community Body Corporate v The Proprietors Cathedral Village BUP 106957* [2020] QCA 239.

- [7] It is inappropriate that any part of the burden of this appeal should fall upon the present appellant, indirectly by the levying of contributions against it. For that reason, it should be ordered, pursuant to s 193, that the amount of costs payable by the respondent to the appellant, as the costs of this appeal, should be paid from contributions levied against the members of the respondent apart from the appellant.
- [8] **JACKSON J:** I agree with the orders for costs proposed by McMurdo JA and with his Honour's reasons for those orders.