

# SUPREME COURT OF QUEENSLAND

CITATION: *Cathedral Place Community Body Corporate v The Proprietors Cathedral Village BUP 106957* [2021] QCA 68

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

FILE NO/S: Appeal No 14271 of 2019  
DC No 2754 of 2010

DIVISION: Court of Appeal

PROCEEDING: Application for Leave – s 118 DCA (Civil) – Further Orders

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

DELIVERED ON: 9 April 2021

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: McMurdo JA and Brown and Ryan JJ

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

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW THE EVENT – where the respondent’s case substantially prevailed on the appeal – whether the respondent should pay the appellant’s costs  
*Mixed Use Development Act 1993 (Qld), s 193*

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

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

- [1] **McMURDO JA:** This appeal was determined by orders which largely upheld the reasoning and orders of the primary judge.<sup>1</sup> Subsequently, a differently constituted court delivered its judgment in an appeal, arising from the same trial but the subject of a separate judgment of the trial judge.<sup>2</sup>
- [2] The parties have presented written submissions on the costs of each appeal, the costs of the proceeding at first instance and whether an order ought to be made under s 193 of the *Mixed Use Development Act 1993* (Qld). These reasons concern only the costs of this appeal.
- [3] In this appeal, the Court differed from the trial judge’s interpretation of the Act in some respects. The Court accepted that there was a necessary constraint on the exercise of the powers of the appellant (CBC), in that it should not burden the funds raised by contributions from all proprietors with the costs of the provision of an amenity or service for particular proprietors or occupiers. This was the essential question in this appeal, and although the appeal was allowed in certain respects, it was the present respondent’s case which substantially prevailed. Consequently, justice would be served by ordering the appellant to pay one half of the respondent’s costs of this appeal. CBC’s submission, that the respondent should pay its costs of this appeal, is irreconcilable with this Court’s reasoning for the disposition of the case.
- [4] Section 193 of the Act provides as follows:
- “193 Costs in proceedings by members against body corporate
- (1) In a proceeding brought by a member against the body corporate, the court may order that an amount (including an amount for costs) payable by the body corporate be paid by the body corporate only in relation to specified members, and in specified proportions, out of contributions levied for the purpose.
- (2) For the purpose of paying the amount, the body corporate must –
- (a) levy contributions in accordance with the order; and
- (b) pay the amount out of the contributions.
- (3) Section 174 applies, with any necessary modifications, to contributions levied under subsection (2).”
- [5] It would be unjust to allow CBC to shift some of the burden of this adverse costs order onto the respondent. Therefore, I would further order that the costs payable by CBC for this appeal be paid by the appellant out of contributions levied for that purpose against the members of the appellant apart from the respondent.
- [6] **BROWN J:** I agree with the reasons for judgment of McMurdo JA and the orders proposed by his Honour.
- [7] **RYAN J:** I agree with the orders proposed by McMurdo JA for the reasons given by his Honour.

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<sup>1</sup> *Cathedral Place Community Body Corporate v The Proprietors Cathedral Village BUP 106957* [2020] QCA 239 (this appeal judgment).

<sup>2</sup> *The Proprietors Cathedral Village BUP 106957 v Cathedral Place Community Body Corporate* [2020] QCA 240 (the second appeal judgment).