



Supreme Court
New South Wales

Case Name: Qasim v Kekatos Lawyers

Medium Neutral Citation: [2021] NSWSC 1366

Hearing Date(s): 19 October 2021

Date of Orders: 26 October 2021

Decision Date: 26 October 2021

Jurisdiction: Common Law

Before: Schmidt AJ

Decision: 1. I order that the proceedings against:
Kekatos Lawyers;
Alan Davidson;
Paula Graham (treasurer);
Strata Professionals: Andrew Thompson;
Heather Mitchell;
Tony Maher; and
Pauline Wright.
be dismissed.
2. I also order that Dr Qasim pay the costs, as agreed
or assessed, of:
Kekatos Lawyers;
Alan Davidson;
Heather Mitchell;
Tony Maher; and
Pauline Wright.

Catchwords: APPEAL — Applicant seeking to set aside a default
judgement — Where plaintiff has not filed or served
affidavits on which she wishes to rely to establish the
grounds of appeal — Adjournment application refused

CIVIL PROCEDURE — Parties — Misjoinder — Failure
to join proper party — Whether defendants having any

interest in the proceedings — Whether proceedings should be dismissed— rules 6.29 and 50.5 of the Uniform Civil Procedure Rules — Proceedings dismissed — Costs Orders

STRATA TITLE — Owners corporation — Whether a member of strata committee of the owner's corporation has an interest in the appeal — Party removed from the proceedings

Legislation Cited:

Crimes Act 1900 (NSW) s 319
Strata Schemes Management Act 2015 (NSW) s 8
Uniform Civil Procedure Rules 2005 (NSW) rr 6.29, 13.4, 50.5

Cases Cited:

Baulderstone Hornibrook Engineering Pty Limited v Gordian Runoff Limited (No 2) [2009] NSWCA 12
Oshlack v Richmond River Council (1998) 193 CLR 72; [1998] HCA 11

Category:

Principal judgment

Parties:

Shaheen Qasim (Plaintiff)
Kekatos Lawyers (First Defendant)
Alan Davidson (Second Defendant)
Paula Graham (Third Defendant)
Strata Professionals (Fourth Defendant)
Mitchell Spiteri (Fifth Defendant)
Heather Mitchell (Sixth Defendant)
Tony Maher (Seventh Defendant)
Pauline Wright (Eighth Defendant)
Alex Ilkin (Ninth Defendant)
GTC Lawyers (Tenth Defendant)

Representation:

Counsel:
Ms G Edwards (Second Defendant)

Solicitors:
Mr B Thomas (First Defendant)
Mr J Reid (Seventh Defendant)
Mr R Byrd (Eighth Defendant)

Dr S Qasim (Plaintiff)(self-represented)
Ms P Graham (Third Defendant (self-represented))
Mr A Thompson (Fourth Defendant) (self-represented)

Ms H Mitchell (Sixth Defendant) (self-represented)

File Number(s): 2021/136133

Decision under appeal:

Court or Tribunal: Local Court Port Macquarie

Date of Decision: 15.04.2021

Before: Magistrate G Darcy

File Number(s): 2020/00348047

JUDGMENT

- 1 Dr Qasim brought these proceedings in May 2021, seeking to appeal the whole of a decision of the Local Court given on 15 April 2021, refusing her application to have a default judgment set aside. Her motion was denied by Darcy LCM and a fixed sum costs order made against her.
- 2 It emerged at the hearing of the appeal that Dr Qasim had not joined as a party the plaintiff who brought the proceedings in the Local Court, The Owners Strata Plan 61034. It had brought those proceedings to recover outstanding levies and other debts it claimed Dr Qasim owed in relation to a property at Old Bar, which she owns. She did not defend the claim, with the result that default judgment was entered against her in January 2021.
- 3 It also emerged that as the result of a misunderstanding, in these proceedings Dr Qasim had also not filed or served the affidavits on which she wished to rely, to establish the grounds of appeal which she advanced. She had relied on those affidavits in the Local Court, when she sought to have the default judgment set aside and in these proceedings, complained that her Honour had not read or properly understood them.
- 4 I refused Dr Qasim's adjournment application, in order that she could obtain those affidavits to tender, being satisfied that the other parties who had appeared had to be heard. That was because their cases were that the proceedings had to be dismissed against each of them, none of them having been a party to the proceedings below and having no interest in the appeal.

- 5 Rule 50.5 of the Uniform Civil Procedure Rules 2005 (NSW) requires that persons who are directly affected by the relief sought in the appeal or who are interested in maintaining the decision under appeal, must be joined as a defendant. On the evidence it was thus The Owners Strata Plan 61034, which should have been named as a party, not the named defendants.
- 6 Having heard those defendants I was satisfied that none of them were proper parties to these proceedings and ordered that the proceedings against them be dismissed, they having been improperly joined. But I made orders for service of a motion and other documents on The Owners Strata Plan 61034, seeking leave to join it as a party to this appeal.
- 7 These are the reasons for those conclusions and for the costs orders I am satisfied should be made against Dr Qasim.

The Local Court proceedings

- 8 Dr Qasim did not dispute that it was in August 2018 that The Owners Strata Plan 61034 had pursued a claim in respect of the property in the Local Court. She was then represented by Kekatos Lawyers. Judgment was entered for The Owners in March 2019, after which Dr Qasim engaged Alex Ilkin to act for her. A garnishee order was made in February 2021.
- 9 The Owners Strata Plan 61034 pursued a second statement of claim in the Local Court in December 2020, seeking to recover other outstanding strata levies and debts from Dr Qasim. It was in those proceedings that default judgment was entered in January 2021, which Dr Qasim unsuccessfully sought to have set aside.
- 10 The parties to those proceedings were also The Owners Strata Plan 61034 and Dr Qasim, although Dr Qasim had named Mr Davidson as a party interested in her motion. He denied any interest and Darcy LCM made orders in his favour.

Dr Qasim's appeal

- 11 Dr Qasim is unrepresented in these proceedings. It is pertinent to note that her summons pleads:

- “1. Leave to appeal from the whole of the decision below.
2. Appeal allowed.

3. Judgement #order (number 1 & 2) of the court below be set aside.
4. The entire decision of the plaintiff seeks in place of the decision of the court below be quashed.
5. [Refund of all monies illegally obtained, by SP 61034, under the false pretence of law society's engagement. There was none. It's a scam.] A real scam. Needs to be investigated by appropriate authorities, ASIC, or a criminal court]
6. The perpetrators pay for the losses incurred by owners who have lost their homes to bogus and defective SOCs & money launderers. The lost homes are to be returned to owners within 3-6 months or face criminal charges forthwith.
7. The magistrate in the court below failed to read evidence / affidavits hence is liable for judicial review & or review of her role as part of coastal community]
8. The on-site managers pay for the losses incurred by the plaintiff, by engaging in antisocial behaviours of turning the plaintiff's tenants Mitchell Spiteri & Adam Mannes into petty thieves and to commit perjury as was the case with Mitchell Spiteri. [RT 18 / 33929, RT 18 / 33929, RT 18 / 34000]
9. Mr Steven Hausfeld must be cross examined over his procedural irregularities incurred by the plaintiff and encouraged perjury against good practice of law relating to defendants, Mitchell Spiteri & Adam Mannes. Mr Steven Hausfeld is a known perpetrator in the region of Manning, Greater Taree area who engages in conduct that denies natural justice to many real estate agents, which also include landlords not just the plaintiff. Mr Steven Hausfeld is liable for prosecution under s 319 of Crimes Act 1900. He needs judicial review over his alleged procedural irregularities, unacceptable manners of throwing files at real estate agents, unprovoked aggression and unruly behaviours.
10. Mrs Heather Mitchell is to provide all receipts as requested by the plaintiff through her agent Supreme Strata & others with an affidavit. She cannot abuse the trust account as she had done in the past, engaging in antisocial behaviours for over a decade. She is liable and responsible for the vegetative state the building is currently in. Refund of all monies to plaintiff illegally obtained under the false pretence of owners' corporations. [> last 10 years] owners of units 1 & 2 past & present file all evidence & engineering reports for public safety within 28 days of being served]
11. All defendants and co-defendants to file affidavits within 28 days of being served."

12 The summons names ten defendants:

- (1) Kekatos Lawyers;
- (2) Alan Davidson;
- (3) Paula Graham (treasurer);
- (4) Strata Professionals: Mr Andrew Thompson;
- (5) Mitchel Spiteri;
- (6) Heather Mitchell;
- (7) Tony Maher;

- (8) Pauline Wright;
- (9) Alex Ilkin; and
- (10) GTC Lawyers.

13 There was no appearance for Mr Spiteri, Mr Ilkin or GTC Lawyers.

Dr Qasim's affidavit and submissions

14 On 7 September Dr Qasim was ordered to file an affidavit annexing the pleadings and transcript of the proceedings in the Local Court on 5 May 2021, as well as written submissions. It is convenient to note that Dr Qasim's short affidavit provided:

"1) Tr page 5, number 10. Davidsons are legitimate defendants in the current action under the banner of SP 61034. They are liable for financial hardship & costs inflicted on all the owners, including myself through a scam of raising levies perpetuating to be from the law society's involvement election of McDermott lawyers & Mr Barry Turner in Queensland,

2) White collar crime was instigated by Davidsons on their arrival. Claiming to be from the involvement of law society in the raising of levies at the AGM OF 2017

3) There is & has been no involvement of the law society as orchestrated by Davidsons through the executive Committee of SP 61034. Annexure B

4) Karen Davidson was not an owner but an owner's partner. But she was an active member of the executive Committee(sic) negotiating the deals for herself as onsite managers while inflicting hardships on other owners.

5) Law society has repeatedly denied any involvement for the appointment of McDermott lawyers & Mr Barry Turner. Neither have ever been known to the law society. Hence all levies that were set, were set on the false presumption of law society's involvement. Is in fact a scam. Annexure A

6) All monies paid to McDermott lawyers is a scam. It's in breach of SSMAAct 1996.

7) Appointment of Barry Turner to write out the management for Davidsons is a private affair and nothing to do with the law society's involvement to raise levies for the owners SP 61034.

8) Number 50, Page 5 I stand by my statement made to magistrate Darcy.

9) Number 10, Page 6. Is true.

10) 15, & 20 paragraphs. Pg 6. Davidsons turned a tenant against the Plaintiff. Annexure C

11) Paragraphs 30, 35 Pg 6. True.

12) Paragraphs 10-25. Page 7. Is unfair. Mr Maher has been proven to be in conflict of interest. Magistrate had not read the affidavits that were filed with the motion.

13) Paragraphs 30, 35 Page 9 True.

14) Mitchell Spiteri with Adam Manns are legitimate for cross claim as they were encouraged by Davidsons to engage in anti social behaviours that resulted in loss of rent and damage to property. Annexure C

15) Paula Graham is a legitimate defendant as she is a treasurer & is responsible for the involvement of law society in raising the levies. I had served her with an affidavit to which she has not replied.

16) Mr Maher is a legitimate defendant as indicated by the magistrate Darcy herself. He has not been fair in replying to the issues raised by the Plaintiff over several years.

17) The others will all be issued cross summons, if necessary to explain the affidavits served on them. Unless they reply to the current summons.

18) Heather Mitchell is an experienced white collar criminal. She is being served with summons. She has been involved in a similar money laundering scam in Sydney. The served affidavit to her is self explanatory. [she has not replied]

19) Kekatos lawyers were not part of the proceedings in lower court but they have failed to prevent the white collar crime against the plaintiff. The affidavit served on them is self explanatory. They need to respond.

20) Mr Davidson is a legitimate defendant & can only be acquitted with a cross summons to pay the plaintiffs lost rental & other antisocial behaviours resulting in misconduct by the tenants. Mitchell Spiteri & Adam Mannes of > \$55,000"

- 15) Annexed to the affidavit were various communications, including to the Law Society and NCAT; a tax invoice for a claim sent to Dr Qasim by AM & KL Davidson Pty Ltd in June 2017 for cleaning and other charges; a June 2017 works invoice for cleaning signed by Mr Spiteri; and the transcript of proceedings before Darcy LCM on 15 April 2021. But the affidavits on which she wished to rely were not annexed.

The Local Court proceedings

- 16) The transcript of the April 2021 proceedings establishes that Mr and Mrs Davidson appeared because they had been named by Dr Qasim as other persons affected by her motion. The Owners Corporation was then represented by Mr Maher, Mr Brigden appeared for Mr and Mrs Davidson and Dr Qasim appeared unrepresented.
- 17) Darcy LCM noted that Dr Qasim had not filed a defence, nor any affidavit which explained why she said that she was not liable to pay the claimed levies. Her Honour explained that in order for the Court to consider setting aside the default judgment, she had to be satisfied that sufficient cause had been shown

that a bona fide ground of defence existed. There also needed to be an adequate explanation of why the defence had not been filed.

- 18 In her submissions Dr Qasim referred to proceedings which she had taken in the Supreme Court. Her Honour observed that there was nothing in the material before her, which could interfere with the course which the matter had taken in the Local Court, with the result the default judgment which had been entered.
- 19 Dr Qasim also said that she had sought legal advice from very senior legal people, as Mr Maher had suggested and that her position was that she needed further time to put material together, to satisfy the Court that the default judgment should be set aside.
- 20 An adjournment was opposed, The Owners submitting that Dr Qasim had been on notice of what was required to set aside the default judgment, since advice given by letter of 7 December 2020.
- 21 Orders dismissing the motion were thus pressed, as well as orders removing Mr and Mrs Davidson as persons interested in the motion. That was because they were not parties to the proceedings and the ill-conceived basis on which they had been identified as having an interest in the motion, namely, being targets of a foreshadowed cross claim.
- 22 Dr Qasim refused to agree to the removal of Mr and Mrs Davidson, advising that "I'll take it further to a higher court". She also explained further the legal advice she had obtained; said "that these people can't bully and rip off owners with their tactics"; that she did not understand that the defence was separate from her affidavit; that she was going to a higher court because of the distress she had been caused; that she had given Mr Maher many opportunities to clarify, but he was acting with others and had a conflict of interest; that the Davidsons had turned her own tenants against her; that they were ripping people off in the name of the Law Society: that the levies had never been raised or sent by the Law Society; that the whole thing was misconceived; that she had used three lots of solicitors who did absolutely nothing; that she had told them about the Law Society and the defective statement of claim and to put on a motion, but they had not done their job.

23 Dr Qasim also said that she wouldn't mind writing another defence, if that clarified the situation, but she did not accept that her motion was defective. She also claimed that the Davidsons were the real culprits in the scam; that she had provided evidence of their underhanded behaviour; and that they should not be onsite managers. Strata Professionals were also not doing their job and should not be holding meetings to raise money for the onsite managers.

24 Her Honour finally gave a short oral decision, holding:

“In relation to the motion before the Court Ms Qasim is seeking to set aside a default judgment that was entered on 22 January this year. That was a judgment for what was said to be unpaid strata levies and associated fees. The judgment was entered after Ms Qasim failed to file a defence in respect of the statement of claim. As Mr Maher has outlined in his affidavit of 14 April 2021 and the annexures there, default judgment was entered forty-two days after the statement of claim was served and that accordingly had given Ms Qasim fourteen days above the twenty-eight days to file a defence. Ms Qasim did not file a defence and in support of the motion today she has annexed what she refers to as three affidavits, they have a number of annexures in fact one of them purports to be a cross-claim against the onsite managers, Mr Brigden is here representing their interests today.

When I look at rule 36.16 of the *Uniform Civil Procedure Rules*, it provides that the Court may set aside or vary a Judgment that has been entered in default, but I need to consider principles which include looking at the whole of the circumstances in deciding whether or not sufficient cause has been shown; if there is an adequate explanation for the default, those are the most relevant matters to consider. I look at Ms Qasim's evidence that has been filed and really it is asserting untoward conduct by Mr Maher which certainly on my reading of the evidence there is no basis for that. Mr Maher has very fairly communicated with Ms Qasim on a number of occasions, he has suggested that she obtain independent legal advice which she tells me she has had very competent legal advice in respect of the matter but there is simply nothing on the material that Ms Qasim has filed which would set out that she has any defence in relation to the matter, nor does it adequately explain why no defence was filed within time. She talks about filing a document that she refers to as a Form 3 in the Supreme Court. The evidence that has been annexed to Mr Maher's affidavit outlines that the Supreme Court responded to the parties on 4 February advising Ms Qasim that her application would appear to be misconceived, so she has been on notice since 4 February that nothing was ongoing in the Supreme Court and despite that, there is still no affidavit before the Court which would outline any defence that she has to the claim. In all of the circumstances, Ms Qasim has not satisfied me that it is appropriate to set aside default judgment and in all of the circumstances I decline to do so and THE MOTION IS DISMISSED.”

25 As a result, her Honour also ordered the removal of the stay which had earlier been granted, pending determination of Dr Qasim's motion and made a costs order, which was also opposed, holding:

“All right in relation to the application for costs. I note each party has identified the power that the Court has to award costs in these circumstances. The general premise is costs follow the cause I hear what Mr Maher says and in the circumstances of this case, it does appear to be appropriate to order a gross sum of costs. I note what Ms Qasim has alleged against the lawyers and the parties involved in this matter. All I can say is that on observation of each of the legal representatives who are before the Court, they have acted in a very professional and reasonable manner and that extends to the fact that each party is only seeking \$700 for the costs of the motion which appears entirely just and reasonable and in all of the circumstances, I ORDER THAT MS QASIM PAY EACH OF THE PARTIES THAT WERE PRESENT THAT HAVE LEGAL REPRESENTATIVES TODAY COSTS IN THE SUM OF \$700 WITHIN TWENTY-EIGHT DAYS.”

Dr Qasim's case

- 26 Dr Qasim filed several separate written submissions, as well as making oral submissions resisting the cases which the defendants, other than finally, Ms Mitchell, pressed.
- 27 Amongst other things Dr Qasim stood by statements which she had made in the Local Court, including that Mr Maher had a proven conflict of interest. She also said that her foreshadowed crossclaim, to which she repeatedly referred, was legitimate, for reasons which she explained, some of them scurrilous and not necessary further to repeat.
- 28 Dr Qasim also responded orally to each case pressed and so I will deal with the defendants separately.

Ms Graham

- 29 Ms Graham appeared in person seeking to be removed as a party having no interest in them and not having been a party to the Local Court proceedings.
- 30 Dr Qasim opposed such an order, despite describing Ms Graham as being a dear friend against whom she had no grievances. Dr Qasim explained that she had spoken to Ms Graham about the involvement of the Law Society and the appointment of McDermott Lawyers and Mr Turner and why they had been paid from a trust account. She had also spoken to the Law Society, which denied involvement in the appointments. Thus, in her view Ms Graham had to attest and address inconsistencies, “in the interest of the general public”.

- 31 Orally Dr Qasim submitted that Ms Graham was the main person who “has been asking other owners of bankruptcy and setting up of levies” and was asking for execution of “these defective statements of claim”.
- 32 It is unnecessary to further explain the misconceived submissions Dr Qasim advanced.
- 33 These proceedings concern only the appeal from the decision of the Local Court, dismissing Dr Qasim’s motion. They are not concerned with the pursuit of an investigation into the history of alleged wrongs which Dr Qasim is interested in pursuing.
- 34 Ms Graham’s position as treasurer, I assume of the strata committee of the owners corporation which is constituted as a body corporate under s 8 of the *Strata Schemes Management Act 2015* (NSW), although this was not established by any evidence, could give her no interest in Dr Qasim’s appeal.
- 35 Accordingly, I was satisfied that the proceedings brought against her had to be dismissed.
- 36 Ms Graham did not seek any order for costs.

Mr Davidson

- 37 There was no issue that Mr Davidson and his wife are the onsite managers of the property.
- 38 Mr Davidson sought an order for his removal as a party under r 6.29 of the Uniform Civil Procedure Rules, which permits removal of a party who has been improperly or unnecessarily joined. His case was that he had already been improperly joined to the motion in the Local Court, which had been dealt with there and that he had no interest in this appeal either.
- 39 Dr Qasim also opposed that order, contending amongst other things that Mr Davidson was a legitimate defendant because he is liable for financial hardship and costs inflicted on all owners as the result of a scam of raising levies “perpetuating to be from the law society’s involvement election of McDermott layers and Mr Barry Turner in Queensland” in Oct 2021.

- 40 Dr Qasim also claimed that money paid to McDermott lawyers involved a scam and foreshadowed that she proposed to bring a cross claim against Mr Davidson.
- 41 I was also satisfied that the proceedings against Mr Davidson had to be dismissed, he also not having been a party to the proceedings in the Local Court and Dr Qasim not having established by her affidavit or submissions that he had any conceivable interest in a dispute over outstanding strata levies and other debts, let alone Dr Qasim's appeal against the dismissal of her motion in the Local Court.
- 42 The usual costs order under the Uniform Civil Procedure Rules is that costs follow the event.
- 43 Dr Qasim opposed any costs order being made in favour of any defendant who sought such orders, because they had contributed to the situation and because she would be pursuing a cross claim against them all.
- 44 That is not a proper basis for refusing a costs order. It was the result of decisions which Dr Qasim made that Mr Davidson was wrongly joined as a party to these proceedings, despite what had been concluded in the Local Court. The exercise of the cost's discretion is compensatory, not punitive and flows from Mr Davidson's success in obtaining an order over Dr Qasim's objections.
- 45 In those circumstances it is just that Dr Qasim be ordered to pay Mr Davidson's costs, as agreed or assessed.

Ms Wright

- 46 Ms Wright was also not a party to the Local Court proceedings. There is no issue that from 1 January 2017 to 31 December 2017 she was the President of the Law Society of NSW. Neither she nor the Society were involved in the Local Court proceedings.
- 47 Dr Qasim also opposed an order removing Ms Wright as a party. In her written submissions Dr Qasim referred to the Law Society, which she claimed had never been involved in the appointment of McDermott Lawyers or Mr Barry

Turner, as claimed by the secretary Ms Mace. Perplexingly, she also submitted:

“7 Pauline Wright acted in a private capacity perpetuating to be from law society’s involvement. She does not have a casting vote, which is why the appointment of McDermott lawyers is/was null & void in 2017.

8 Annexure B confirms the involvement of ex-president & defendant Pauline Wright in the appointment of McDermott lawyers & Barry Turner. This is again alleged misconduct. A serious crime that has caused harm to many.

9 I make this submission for the commencement of cross-claims. Let me state humbly that this is not a threat but a reminder. Every day is not Sunday.”

- 48 In her May 2021 affidavit Dr Qasim also deposed that Ms Wright had engaged in conduct liable for prosecution under s 319 of the *Crimes Act* 1900 (NSW). It is concerned with acts or omissions intended to pervert the course of justice. No basis for such a serious allegation has been advanced.
- 49 Orally Dr Qasim submitted that while perhaps the correct forum was a cross claim. She also said that part of the affidavit she had relied on in the Local Court had raised Ms Wright’s involvement and the many emails she had sent her, to which she had not responded.
- 50 None of this established that Ms Wright was a proper party to this appeal. It followed that the proceedings against Ms Wright also had to be dismissed. She was not a party to the proceedings in the Local Court and what Dr Qasim advanced did not establish that Ms Wright had any conceivable interest in a dispute over outstanding strata levies and other debts, let alone in this appeal.
- 51 In the result a costs order must also be made in favour of Ms Wright.

Mr Maher

- 52 Mr Maher was also not a party to the proceedings in the Local Court, where he had appeared to represent the Owners Strata Plan 61034. His case was that so far as he was concerned, the proceedings were frivolous, vexatious and an abuse of process and thus ought to be dismissed under r 13.4 of the Uniform Civil Procedure Rules.
- 53 Dr Qasim also opposed Mr Maher’s application, submitting that he had had a conflict of interest and had not been transparent in disclosing simple matters she had asked, with the result of a waste of Court time. He had also pursued

other owners losing their homes, because of the wrongdoing happening in the strata scheme.

- 54 Again, I was satisfied that the proceedings brought against Mr Maher had to be dismissed. He was also not party to the proceedings in the Local Court and what Dr Qasim advanced by her affidavit and submissions was incapable of establishing a basis upon which it could be concluded that he had any interest in this appeal.
- 55 Mr Maher sought an indemnity costs order in his favour, there being no prospect of any chance of success against him on this appeal, as Dr Qasim should have known if properly advised: *Baulderstone Hornibrook Engineering Pty Limited v Gordian Runoff Limited (No 2)* [2009] NSWCA 12 at [4]. Such orders may be made when proceedings are imprudently or unreasonably taken.
- 56 It is settled that indemnity costs are usually ordered when there is some relevant unreasonable action of misconduct in connection with the proceedings: *Oshlack v Richmond River Council* (1998) 193 CLR 72; [1998] HCA 11. I do not consider that there has been such misconduct.
- 57 Dr Qasim's joinder of Mr Maher and resistance of the order removing him as a party was certainly misconceived. But it should be appreciated that she is unrepresented and believes that he had an interest in the appeal, which she pursues not only to overturn the Local Court's decision, so that she can defend the claim brought against her, but so that she can pursue a cross claim against Mr Maher and others.
- 58 Dr Qasim is misguided in thinking that this provided a basis for joining Mr Maher as a party to the appeal, but I am satisfied does not justly provide a basis for an indemnity costs order.
- 59 In the result a costs order must be made in favour of Mr Maher on the usual basis.

Ms Mitchell

- 60 Ms Mitchell's case was also that she had not been a party to the Local Court proceedings, had no interest in the appeal and that until served with the

summons in these proceedings, she was not even aware of the Local Court proceedings and knew nothing of the matters addressed in the summons. She asked the proceedings brought against her be dismissed, no error of law having in any event been established by the appeal and orally, that they should be struck out against her.

61 Ms Mitchell acknowledged that she was an owner in the building; that Supreme Strata acts as managing agent, so that expenses incurred in relation to the common property are incurred on its instructions. But said that she had no responsibility for the common property.

62 In her 19 July submissions Dr Qasim claimed that Ms Mitchell had been involved in misappropriation, unruly conduct and harassment for over a decade. That she said, was her argument with Ms Mitchell, although she also there referred to proceedings which she claimed Ms Mitchell had commenced in this Court in 2010, as well as CTTT proceedings taken in 2004. She also claimed that Ms Mitchell was liable for costs incurred over a decade, as well as the “vegetative state” of the building, due to her antisocial behaviours and abuse of a position of trust.

63 Dr Qasim also foreshadowed that she would seek compensation and reinstatement of the 2010 proceedings, “to regain the glorious look of the building”.

64 These submissions supported the case which Ms Mitchell advanced. These proceedings concern only the appeal from the Local Court, not earlier proceedings in the CTTT or this Court, nor Dr Qasim’s articulated ongoing concerns with Ms Mitchell’s alleged conduct.

65 Dr Qasim finally did not object to orders dismissing the proceedings against Ms Mitchell being made, although she did not explain why, with the result that I made that order, by consent.

66 Ms Mitchell still sought an order for costs, which Dr Qasim opposed.

67 I am satisfied that the circumstances in which Dr Qasim’s late concession was made, provide no just basis for a departure from the usual costs order in Ms Mitchell’s case.

Kekatos lawyers

- 68 The Kekatos' position was like that of the other defendants. Mr Jim Kekatos deposed that he was also not a party to the proceedings from which this appeal arose and thus also asked that the proceedings brought against him be dismissed and finally, that orders would be made under r 50.5 and/or r 6.29 of the Uniform Civil Procedure Rules.
- 69 Mr Kekatos' affidavit annexed various correspondence. On his evidence he had received instructions from Dr Qasim in relation to Local Court proceedings in September 2018. Further particulars of the claim were sought in October. A response and amended statement of claim were later provided and a settlement arrangement proposed.
- 70 Dr Qasim then instructed him not to accept service of that pleading. He did not enter an appearance in the proceedings, her instructions being withdrawn after fees were not paid, with his retainer coming to an end in December 2018.
- 71 Dr Qasim still opposed the orders sought being made, despite in her written submissions having conceded that Mr Kekatos was not a party to the Local Court proceedings.
- 72 In her affidavits Dr Qasim referred to failures to respond to affidavits she had served on Mr Kekatos and questions she had asked of him in the past, as well as failing to follow her instructions about ongoing harassment and orders made contrary to instructions, so that perpetrators were brought to justice. She also alleged conduct liable for prosecution under s 319 of the *Crimes Act*.
- 73 Again, nothing that Dr Qasim advanced could result in the conclusion that Mr Kekatos was a proper party to this appeal. He, too, was not party to the proceedings in the Local Court and simply had no conceivable interest in this appeal. At one point she observed that "perhaps a cross summons would be a better way of obtaining answers from them", which underscored the misconceived basis on which the proceedings were brought against Mr Kekatos and others.
- 74 In the result orders dismissing the proceeding against Kekatos Lawyers, with a costs order in Mr Kekatos' favour, also had to be made.

Mr Thompson

- 75 There was also no issue that Mr Thompson was not a party to the Local Court proceedings. He echoed what the other parties had submitted and also sought to be removed as a party to the proceedings.
- 76 Dr Qasim also opposed that order, explaining that she had talked to Mr Thompson because he was the main communicator for the Law Society and had failed to provide a brief or respond to her emails. She also considered that a cross summons might be the best option, but there is no question that one had not been brought, before the proceedings were dismissed.
- 77 In the result I was also satisfied that orders dismissing the proceedings against Mr Thompson had to be made. He did not press an order for costs.

Orders

- 78 For the reasons given, having ordered that the proceedings against them be dismissed, I also order that Dr Qasim pay the costs, as agreed or assessed, of:
- (1) Kekatos Lawyers;
 - (2) Alan Davidson;
 - (3) Heather Mitchell;
 - (4) Tony Maher; and
 - (5) Pauline Wright.

Amendments

27 October 2021 - Insert Strata Professionals: Andrew Thompson into Decision as per the order in para 77.

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