

DISTRICT COURT OF QUEENSLAND

CITATION: *The Body Corporate for the Anchorage One v Huang*
[2023] QDC 191

PARTIES: **THE BODY CORPORATE FOR THE ANCHORAGE ONE**
Plaintiff
v
YUE HUANG
Defendant

FILE NO/S: TD 213/2020

DIVISION: Civil

DELIVERED ON: 23 October 2023

DELIVERED AT: Brisbane

HEARING DATE: 24 July, 25 July, 26 July, 4 September, 27 September, 28 September, 29 September 2023

JUDGE: Barlow KC, DCJ

ORDERS: **The plaintiff have leave to amend the claim and statement of claim in accordance with the drafts provided to the Court.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – GENERALLY –the plaintiff sought leave to amend pleadings during the trial to include a claim for costs – whether leave should be granted

Uniform Civil Procedure Rules 1999 (Qld), r 376, r 377

Michael Vincent Baker Superannuation Fund Pty Ltd v Aurizon Operations Ltd [2017] 2 Qd R 761, applied

COUNSEL: T Schmidt for the plaintiff (24 July to 26 July 2023)
J Hastie for the plaintiff (4 September to 29 September)

SOLICITORS: SLF Lawyers for the plaintiff
Yue Huang, Self-represented defendant

[1] The plaintiff seeks to recover unpaid contributions which it levied on the defendant, Ms Huang – the owner of a lot in the community title scheme. The claim is brought under s 143(1) of the *Body Corporate and Community Management (Accommodation Module) Regulation 2008* and s 156(1) of the *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (respectively, the **2008 Accommodation Module** and the **2020 Accommodation Module**). Evidence

in the trial of that claim, including the trial of a counterclaim by the defendant, was heard by me on 24 to 26 June and 27 to 29 September 2023. The parties are currently in the process of preparing written submissions in accordance with directions made at the conclusion of the evidence.

[2] The plaintiff also seeks to recover its “recovery costs,” as that term is used in s 143(1)(c) of the 2008 Accommodation Module and s 156(1)(c) of the 2020 Accommodation Module. However, rulings made in the course of the trial mean that there is now no evidence before the Court to support the claim for recovery costs and no ability for the plaintiff to argue that that claim should be determined later.

[3] The present iterations of the claim and statement of claim do not advance any alternative claim for the plaintiff’s legal costs of its claim, that is, for assessable costs under an order of the Court or under the *Uniform Civil Procedure Rules 1999*.

[4] In circumstances where the claim for recovery costs cannot now succeed, the plaintiff sought leave, during the trial on 27 September, to amend its claim and statement of claim to include a claim for costs. Those amendments require leave under rr 376 and 377 of the UCPR. I put off determining that application until the end of the trial proper and subsequently sought submissions on whether I should grant such leave.

[5] The plaintiff submits that I should grant it leave to amend for four reasons. **First**, there is no prejudice to the defendant, as that claim will be determined after the substantive claim and counterclaim have been determined by me. **Secondly**, and conversely, the plaintiff would suffer considerable prejudice if it were shut out from claiming its costs of the claim (if successful) in the ordinary way. **Thirdly**, in any event, it appears that, even absent an express claim for costs in a claim and statement of claim, a successful party can seek an order for its costs at the end of a proceeding, [1] so no harm is done by formally making such a claim; rather, to add an express claim for costs makes it clear that the issue of its costs will be raised after judgment if it succeeds in the substantive claim. **Fourthly**, the plaintiff did not delay in making the application to amend when it became obvious that its claim for “recovery costs” could not succeed.

[6] The defendant opposes leave being given. She contends that, because the claim continues, in its claim and statement of claim, to seek recovery costs under the Regulations and now also seeks costs, to allow the amendment would revive the claim for recovery costs. She also contends that to allow the amendment could potentially lead to confusion and additional disputes: in particular, if the plaintiff succeeds in its claim and costs follow the event, the plaintiff may in effect reinstate its claim for recovery costs.

[7] While I understand the defendant’s concerns, in my view they indicate a misunderstanding of the effect of the proposed amendment, if allowed. The plaintiff has not sought to “reinstate” its claim for recovery costs. It has not deleted its claim, but it appears to accept that it cannot succeed in that claim as the documents on which it intended to rely were not admitted in evidence. Having understood that likelihood, it has not formally abandoned that claim but it seeks to amend to add a claim for ordinary costs if it succeeds in its claim for the alleged debts. Such a claim is an ordinary corollary to any other claim in this court. It is understandable that the plaintiff did not originally claim costs, as it was claiming a greater alleged entitlement, namely to recovery costs under the Regulations. To claim both types of costs would be duplicative. While it could originally have claimed costs in the alternative to recovery costs, it did not do so until now.

[8] I consider it appropriate to allow the amendment. The submissions made by counsel for the plaintiff in support of the application have force. The effective entitlement of a plaintiff to seek a costs order if it succeeds in its principal claim, as described in the case referred to above, results in there being no prejudice to the defendant if the plaintiff were now to have leave to make the amendments sought.

[9] I shall therefore give the plaintiff leave to amend the claim and statement of claim in the manner sought.

[1] *Michael Vincent Baker Superannuation Fund Pty Ltd v Aurizon Operations Ltd* [2017] 2 Qd R 761, [16] to [17].