Signed by AustLII

SUPREME COURT OF QUEENSLAND

CITATION:	*Wallace v Caesarstone Australia Pty Ltd (No 2)* [2025] QSC 250
PARTIES:	**GERARD ROSS WALLACE** (first plaintiff) **SARAH LOUISE WALLACE** (second plaintiff) **v** **CAESARSTONE AUSTRALIA PTY LTD** ABN 45 121 819 976 (first defendant) **SMARTSTONE AUSTRALIA PTY LTD** ABN 19 148 937 008 (second defendant) **WK MARBLE & GRANITE PTY LTD** ABN 29 074 331 981 (third defendant) **LAMINEX GROUP PTY LIMITED** ABN 98 004 093 092 (fourth defendant) **COSENTINO AUSTRALIA PTY LIMITED** ABN 66 150 158 277 (fifth defendant) **HALIFAX VOGEL GROUP PTY LIMITED** ABN 75 104 808 853 (sixth defendant) **CAESARSTONE LTD** (seventh defendant) **CARSILSTONE PTY LIMITED** ACN 104 148 389 (eighth defendant) **GROUP MANUFACTURING PTY LTD** ABN 73 095 052 341 (ninth defendant) **ACCENT BENCHTOPS PTY LTD** ABN 60 108 354 598 (tenth defendant) **WORKCOVER QUEENSLAND** ABN 40 577 162 756 (eleventh defendant)
FILE NO:	BS 15527 of 2023
DIVISION:	Trial Division

Retrieved from AustLII on 25 December 2025 at 10:28:51

Verify version

Signed by AustLII

PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	25 November 2025
DELIVERED AT:	Brisbane
HEARING DATE:	The determination was made on written submissions without oral hearing
JUDGE:	Davis J
ORDER:	**The defendants pay the plaintiffs' costs of the application on the indemnity basis.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – INDEMNITY COSTS – POWER TO ORDER – RELEVANT CONSIDERATIONS GENERALLY – where the defendants neglected to comply with orders of the Registrar – where the plaintiffs made application to dispense with the defendants' signatures on the Request for Trial Date – where the defendants resisted that application – where it was ordered that the signatures of the defendants ought to be dispensed with – whether the defendants should pay the costs of the application – whether the costs of the application ought to be paid on the indemnity basis *Uniform Civil Procedure Rules 1999* (Qld), r 681, r 702 *Colgate Palmolive Co v Cussons Pty Ltd* (1993) 46 FCR 225; [1993] FCA 801, cited *Daracon Engineering Pty Limited v Kelsall & Ors* [2025] NSWCA 189, followed *Doerr v Gardiner [No 2]* [2024] QCA 021, cited *Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd* (1988) 81 ALR 397; [1988] FCA 364, cited *Rosniak v Government Insurance Office* (1997) 41 NSWLR 608, followed *Wallace v Caesarstone Australia Pty Ltd* [2025] QSC 219, related
COUNSEL:	J O McClymont KC made written submissions for the plaintiffs H L Blattman KC made written submissions for the first, second, third, sixth, seventh, and eighth defendants No written submissions were received from the remaining defendants
SOLICITORS:	VBR Lawyers for the plaintiffs Holman Webb Lawyers for the first, second, third, sixth, seventh, and eighth defendants

Retrieved from AustLII on 25 December 2025 at 10:28:51

Verify version

Signed by AustLII

Bartier Perry Lawyers for the fourth defendant
Lander & Rogers for the fifth defendant
McInnes Wilson for the ninth and eleventh defendants
McInnes Wilson acting as Town Agent for Rankin Ellison Lawyers for the tenth defendant

[1] This is the determination of the costs of an application on which judgment was delivered on 5 September 2025.[1]

[2] The first plaintiff claims that he has contracted a terminal lung disease as a result of working with engineered stone during his employment with the ninth and tenth defendants. The eleventh defendant is the statutory insurer representing two now-deregistered employers. The other defendants manufactured the stone with which the first plaintiff worked. The second plaintiff is the first plaintiff's wife and she sues for loss of consortium.

[3] On 15 August 2025, I heard an application brought by the plaintiffs to dispense with the defendants' signatures on a Request for Trial Date delivered by the plaintiffs. On 5 September 2025, the following orders were made:

> "1. The signature of each defendant on the Request of Trial Date is dispensed with.
>
> 2. The defendants have leave to deliver a report by Occupational Hygienist, Alan Rogers, by 4.00 pm on 31 October 2025.
>
> 3. The proceedings are placed on the Supervised Case List.
>
> 4. The plaintiffs file and serve written submissions on the question of the costs of the application by 4 pm on 12 September 2025.
>
> 5. The defendants file and serve written submissions on the question of the costs of the application by 4 pm on 19 September 2025.
>
> 6. Any party may file and serve, by 4 pm on 26 September 2025, a notice of intention to make oral submissions on costs.
>
> 7. In the event that no notice is filed, the question of costs will be determined on any written submissions received without further oral argument."[2]

[4] Written submissions on costs were filed and exchanged.[3] While written submissions were received on behalf of the first, second, third, fifth, sixth, seventh and eighth defendants (the supplier defendants), no written submissions were provided on behalf of the remaining defendants.

[5] As the remaining defendants generally deferred to the submissions advanced by senior counsel for the supplier defendants during the hearing of the application, and

---

1 *Wallace v Caesarstone Australia Pty Ltd* [2025] QSC 219.
2 *Wallace v Caesarstone Australia Pty Ltd* [2025] QSC 219.
3 Orders 4 and 5 set out in paragraph [3] of those submissions.

Retrieved from AustLII on 25 December 2025 at 10:28:51

Verify version

Signed by AustLII

as no party has filed a notice of intention to make oral submissions,[4] I have assumed that the position of the remaining defendants corresponds with the position of the supplier defendants as to costs.

Submissions of the parties

[6] The plaintiffs seek costs on the indemnity basis and they found that submission on their victory on the application[5] and on various findings made in the primary judgment, in particular:

(a) the defendants were in default of directions;[6]

(b) that default had persisted for about 18 months;[7]

(c) there was no satisfactory reason given for the default; [8] and

(d) rejection of an argument raised by the defendants that the plaintiffs were acting unreasonably in seeking trial dates before other claimants whose cases are on the Supervised Case List.[9]

[7] The defendants submitted that there should be no order as to costs of the application. They submit that the plaintiffs were also in breach of their obligations as they delivered a report of a Mr Martin Jennings as to liability on 19 May 2025. They also submit that they were partially successful in obtaining leave to deliver a report or answer to Mr Jenning's latest report, and in having the matter placed on the Supervised Case List.

[8] In the alternative, if they are ordered to pay the costs of the plaintiff, the defendants submit that costs should be ordered not on the indemnity basis but on the standard basis.

Consideration

[9] As already observed, the defendants rely upon the delivery by the plaintiffs of a report in May 2025. This complaint was advanced by the defendants on the hearing of the application and dealt with in the primary judgment.[10] Disappointingly, it is necessary to revisit the issue.

[10] The report delivered on 19 May 2025 by the plaintiffs was authored by an occupational hygienist, Mr Jennings. Mr Jennings was also the author of a report dated 6 May 2020 which was disclosed by the ninth and eleventh defendants in August 2024.

[11] Despite the submission during the hearing of the application that it was necessary to answer Mr Jennings' latest report, an examination of the defendants' activity (or lack thereof) between 19 May 2025 and the hearing of the application on 15 August 2025 reveals that the only step taken was that of identifying another occupational

---

4 Orders 6 and 7 set out in paragraph [3] of those submissions.
5 *Uniform Civil Procedure Rules 1999,* r 681.
6 *Wallace v Caesarstone Australia Pty Ltd* [2025] QSC 219 at [40].
7 At [52].
8 At [44].
9 At [49].
10 At [17], [21], [36], [37], [41] and [42].

Retrieved from AustLII on 25 December 2025 at 10:28:51

Verify version

Signed by AustLII

hygienist, Mr Alan Rogers, as the person who would author a reply. Mr Rogers had not even been briefed at the time the application was heard.

[12] At no time prior to the hearing of the application did the defendants' offer to sign the Request for Trial Date on the condition that they could deliver and rely upon a report by Mr Rogers. At no time before the hearing of the application did the defendants offer to sign the Request for Trial Date if the plaintiffs agreed to have the proceedings placed on the Supervised Case List so it could be managed to trial.

[13] Neither of those steps were contentious. When asked during the hearing whether what became orders 2 and 3 were opposed, Ms McClymont KC for the plaintiffs said they weren't.

[14] The plaintiffs have been successful in their application. The defendants achieved no success on any contentious issue. The defendants ought pay the plaintiffs' costs of the application. The only issue is whether the costs should be paid on the standard or the indemnity basis.

[15] There are numerous decisions where factors have been identified as justifying an award of costs on an indemnity basis. In such cases as *Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd*[11] and *Colgate Palmolive Co v Cussons Pty Ltd*,[12] attempts were made to categorise circumstances where an award of indemnity costs should be made.

[16] However, the circumstances justifying departure from the usual rule that costs be assessed on a party/party basis cannot be conclusively defined. In *Rosniak v Government Insurance Office*[13], the Court of Appeal of New South Wales said this:

> "… the court requires some evidence of unreasonable conduct, albeit that it need not rise as high as vexation. This is because party and party costs remain the norm, although it is common knowledge that they provide an inadequate indemnity. Any shift to a general or common rule that indemnity costs should be the order of the day is a matter for the legislature or the rule-maker."[14]

[17] In *Daracon Engineering Pty Limited v Kelsall & Ors,*[15] the Court of Appeal of New South Wales ordered indemnity costs against an unsuccessful appellant. The Court observed:

> "Caution is to be exercised before departing from the ordinary exercise of discretion as to costs. Nonetheless, the present is a case where an order for indemnity costs should be made, to signal a proceeding which sufficiently departed from the standards expected by this Court by litigants represented by legal practitioners such as to constitute a 'relevant delinquency' as it was put by the High

---

11 (1988) 81 ALR 397.
12 (1993) 46 FCR 225.
13 (1997) 41 NSWLR 608.
14 At 616; and see generally *Doerr v Gardiner [No 2]* [2024] QCA 21 for a recent discussion of the principles by the Court of Appeal.
15 [2025] NSWCA 189.

Retrieved from AustLII on 25 December 2025 at 10:28:51

Verify version

Signed by AustLII

Court in *Oshlack v Richmond River Council* (1998) 193 CLR 72; [1998] HCA 11 at [44]." (emphasis added)

[18] It is unnecessary to analyse further the authorities which have considered the principles which govern the exercise of discretion to award costs on an indemnity basis. The discretion clearly arises when a party or parties have acted as unreasonably as in the case here.

[19] Here, the defendants neglected their obligations imposed by orders of the Registrar and by the UCPR. The defendants should have acknowledged their neglect of their obligations, consented to the order dispensing with their signatures on the Request for Trial Date and sought directions enabling them to take steps to get ready for trial.

[20] It is likely, given the plaintiffs' acceptance during the hearing of the appropriateness of leave being given to provide Mr Rogers' report and their acceptance of the defendants' request to have the proceedings placed on the Supervised Case List, that the parties could have resolved the application by consent.

[21] Instead, after 18 months of neglect by the defendants, they scrambled around at the last minute, and tried to lay blame at the feet of the plaintiffs. One of those arguments I have already dealt with. That is the complaint about Mr Jennings' report; a report which the defendants had taken no steps to answer from mid-May to mid-August, some three months.

[22] Another argument was based on the fact that there are other cases involving claims arising from engineered stone which are being supervised by Freeburn J on the Supervised Case List. It was argued by the defendants that the plaintiffs were somehow acting improperly because they were seeking to have their case prosecuted before other like cases. That submission was completely baseless. The plaintiffs were simply prosecuting their case consistently with the rules of Court and orders of the Registrar. The progress of other claims was irrelevant.

[23] In my view, the conduct of the defence of the application by the defendants was unreasonable and they should pay the plaintiffs' costs on the indemnity basis.

Orders

1. The defendants pay the plaintiffs' costs of the application on the indemnity basis.

Retrieved from AustLII on 25 December 2025 at 10:28:51

Verify version