SUPREME COURT OF QUEENSLAND

CITATION:	*Beck v Kucks* [2026] QSC 101
PARTIES:	**JESSICA ELLEN BECK** (first plaintiff) **KRISTIAN FREDERICK BECK** (second plaintiff) **v** **NADINE RUBINA KUCKS** (first defendant) **MICHAEL ALLAN KUCKS** (second defendant)
FILE NO/S:	BS 5773/25
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	16 June 2026
DELIVERED AT:	Supreme Court at Brisbane
HEARING DATE:	Heard on the papers
JUDGE:	Wilson J
ORDER:	**The defendants pay the plaintiffs' costs of the proceeding on an indemnity basis.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the primary judgment found that the plaintiffs were entitled to specific performance and damages – where the contract between the parties entitled the buyer to claim damages for any losses it suffered as a result of the sellers' default, including its legal costs on an indemnity basis – where the plaintiffs submit that the costs order ought to give effect to the contractual agreement between the parties – where the defendants submit that the appropriate costs order is that the defendants pay the plaintiffs' costs of the proceedings, to be agreed or assessed on the standard basis – where the defendants submit that the correct starting point is that costs are in the discretion of the court and that a "special" basis of assessment is not given simply because the contract provides for the same – where the defendants submit that discretionary factors militate against the making of a "special" basis of

assessment – whether the plaintiffs should be awarded costs on an indemnity basis – whether discretionary factors militate against the making of a "special" basis of assessment

Uniform Civil Procedure Rules 1999 (Qld), r 681(1)

Beck v Kucks [2026] QSC 35
Chen v Kevin McNamara & Son Pty Ltd (No. 2) [2012] VSCA 229
Clancy v Carlson [2021] QDC 33
Commonwealth of Australia v Grellon [2008] NSWCA 117
lnterchase Corporation Ltd (in liq) v Grosvenor Hill (Qld) Pty Ltd (No 3) [2003] 1 Qd R 26
Platinum United II Pty Ltd v Secured Mortgage Management Ltd (in liq) [2011] QCA 229
Storey v Britton [No 3] [2025] QSC 307
Willmott v McLeay [2013] QCA 84

COUNSEL: S A Scarlett for the plaintiffs
C H Matthews for the defendants

SOLICITORS: Hallewell Law for the plaintiffs
Axia Litigation Lawyers for the defendants

[1] On 19 March 2026, I ordered that Mr and Mrs Beck ('**the plaintiffs**') were entitled to specific performance of the contract in which they were contracted to buy a property for a purchase price of $1,210,000, in circumstances where Mr and Mrs Kucks ('**the defendants**') believed that they were selling that property for $1,355,000 ('**the Contract**').[1]

[2] The defendants raised a number of bases on which relief to correct a purchase price error was available to them, namely:

(a) unilateral mistake and unconscientious advantage;

(b) common intention of the parties;

(c) estoppel; and

(d) misleading or deceptive conduct or unconscionable conduct.

[3] I found that:

(a) none of those bases had any merit;

(b) that the plaintiffs were ready, willing and able to perform their part of the bargain;

(c) that there was no basis for the defendants to refuse to complete the Contract; and

1 *Beck v Kucks* [2026] QSC 35.

(d) that the Contract was capable of being performed.

[4] In the circumstances, the following orders were made:

(a) a declaration that the Contract entered into on 23 September 2025 between the plaintiffs and the defendants for the sale of the property for the price of $1,210,000 remained on foot;

(b) that the defendants:

(i) specifically perform the Contract, with settlement to occur on 31 March 2026; and

(ii) pay the plaintiffs damages for breach of the Contract in the sum of $13,850.41 (excluding any amount for legal costs).

[5] The outstanding issue is costs.

[6] The general rule is that the costs of a proceeding are in the discretion of the court but follow the event, unless the court otherwise orders.[2]

[7] The "event" is not determined merely by reference to the judgment or order, but is to be determined by reference to the "events or issues" if there are more than one arising in the proceeding.[3]

[8] The touchstone of the general rule, and any departure from it, is fairness — having regard to what the court considers to be the responsibility of each party for incurring the costs.[4]

[9] There is no dispute between the parties that the defendants ought to pay the applicants' costs. The issue is on what basis costs ought to be paid.

[10] The plaintiffs state that, pursuant to clause 9.8 of the Contract, they have a contractual entitlement to their costs being awarded on an indemnity basis and there is no reason not to give effect to the agreement of the parties.

[11] The defendants state that the costs of the proceeding should be assessed on the standard basis.

[12] Alternatively, if costs are awarded on an indemnity basis, the defendants submit that such an assessment should only apply to the relevant "event" of the claim to damages, given the entitlement to claim such an assessment is intrinsically tied to a claim for damages (not specific performance).

The Contract

[13] In this case, on the failure of the defendants to settle the Contract, the plaintiffs affirmed the Contract and sued the defendants for damages and specific performance pursuant to clause 9.3(3).

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2 *Uniform Civil Procedure Rules 1999* (Qld) r 681(1).

3 *Interchase Corporation Ltd (in liq) v Grosvenor Hill (Qld) Pty Ltd (No 3)* [2003] 1 Qd R 26 at 60-61.

4 *Commonwealth of Australia v Grellon* [2008] NSWCA 117 at [121].

[14] The Contract, which is a standard REIQ contract, deals with the plaintiffs' entitlement to indemnity costs in clause 9.8, which provides that:

> ***Buyer's Damages***
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> *The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.*

[15] *Chen v Kevin McNamara & Son Pty Ltd (No. 2)* sets out the consequences of a contractual entitlement to legal costs:

> "An agreement to pay costs will be construed as an agreement to pay costs on a party and party basis, unless it is plain from its terms that costs are to be paid on a 'special basis.' **Where the terms plainly and unambiguously provide for costs to be assessed on some special basis, the court will take such a provision into account** but it is not bound to give effect to any extra-curial contract as to costs. An agreement to pay costs on a 'special' basis is only a factor informing the exercise of the court's discretion, but not requiring the exercise of that discretion in a particular way. Generally however, **where the parties have unmistakeably agreed to the making of a special costs order, such a term will be given effect** to unless there is some other discretionary consideration that militates against the making of such an order." [5] [emphasis added]

[16] In *Willmott v McLeay*,[6] Holmes JA (as her Honour then was) considered clause 9.7 of the standard REIQ contract, which is an equivalent provision (to that of the plaintiffs' claim for indemnity costs under clause 9.8) for seller's damages.

[17] Holmes JA distinguished *Chen* because the contract did not plainly and unambiguously provide for an entitlement to indemnity costs; rather the entitlement to claim indemnity costs under the contract was expressed as a component of damages for loss resulting from the default of the other contracting party.[7] In *Willmott* there was no claim for damages, so Holmes JA found the contract did not plainly entitle the innocent party for the payment of costs on an indemnity basis.

[18] I note that some cases have distinguished *Willmott* on the basis of claims for damages being made and awarded.[8]

[19] Recently, Freeburn J considered clause 9.8 of the standard REIQ contract in *Storey v Britton [No 3]* [2025] QSC 307. The clause in *Storey v Britton* was in identical terms to clause 9.8 of the contract between the parties in this proceeding.

[20] Freeburn J considered that by clause 9.8 of the contract, the parties had plainly and unambiguously elected that the buyers would be entitled to their costs on an indemnity basis in circumstances where the buyers affirmed the contract and sued for

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5 [2012] VSCA 229 at [8] cited with approval by Freeburn J in *Storey v Britton [No 3]* [2025] QSC 307 at [10].

6 [2013] QCA 84.

7 Ibid, [29].

8 *Storey v Britton [No 3]* [2025] QSC 307 at [11], [14]; *Clancy v Carlson* [2021] QDC 33 at [71].

damages and specific performance.[9] His Honour noted that, had the situation been reversed and the sellers had failed to complete their obligations, the sellers would have been entitled to their costs on an indemnity basis.[10]

[21] Notably, the contractual entitlement to claim indemnity costs being tied to a damages claim was considered:

> "The provision is substantially the same as clause 9.8 here. Clause 9.7 and 9.8 are mirror images, with clause 9.7 applying in the event of a seller's claim for damages and clause 9.8 applying in the event of a buyer's claim for damages. However, *Willmott v McLeay* is distinguishable. Under clause 9.7 and 9.8 of the standard REIQ contract, perhaps surprisingly, the contractual entitlement to claim indemnity costs is tied to damages claims. That is clear from the fact that clause 9.8 gives the buyer a right to claim damages as a result of the seller's default, including its legal costs on an indemnity basis. As Holmes JA pointed out, the drafting of the entitlement to claim indemnity costs is expressed as a component of damages for loss resulting from the default of the other contracting party. That seems to arise from the idea that the entitlement is to claim damages, including indemnity costs. In *Willmott v McLeay* there was no claim for damages and so Holmes JA was not persuaded that the parties had contracted "plainly and unambiguously" for payment of costs on an indemnity basis.
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> …
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> In *Clancy v Carlson* Dann DCJ distinguished *Willmott v McLeay* because in that case damages had been claimed and awarded. I propose to adopt a similar approach here."[11] [citations omitted]

[22] Freeburn J had regard to *Platinum United II Pty Ltd v Secured Mortgage Management Ltd (in liq)* [2011] QCA 229 where Fraser JA observed that:

> "The general principle is that a mortgagee is ordinarily limited to party and party costs (or "the standard basis of assessment" in r 702 of the Uniform Civil Procedure Rules 1999 (Qld) ('UCPR')) but a court will usually exercise the discretion as to costs to give effect to a contractual provision which "plainly and unambiguously" provides for taxation on another basis. It is doubtful whether cl 15.1(C) of the agreement confers an entitlement to have costs assessed on the indemnity basis in sufficiently clear terms to justify the exercise of that discretion, but the expression "on an indemnity basis" in cl 17.4(a) clearly comprehends "the indemnity basis of assessment" of costs provided for in UCPR r 703(1)."[12] [citations omitted]

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9 *Storey v Britton [No 3]* [2025] QSC 307 at [11].
10 Ibid.
11 Ibid, [14], [16].
12 At [6].

[23] Ultimately Freeburn J awarded the buyers their costs on an indemnity basis pursuant to clause 9.8 of the contract:

> "Damages were claimed here as an alternative to specific performance. No damages were awarded because the orders for specific performance were sufficient for the Storeys. As explained in the principal judgment the main issue was whether the contract had been validly terminated or remained on foot.[13] The issue of damages was put aside. However, the entitlement to claim damages and indemnity costs remained.
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> In any event, applying the test in *Chen v Kevin McNamara & Son Pty Ltd (No. 2)*, the terms of the contract here plainly and unambiguously provide for costs on an indemnity basis.
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> The order will be that the defendants pay the plaintiffs' costs of the proceeding on an indemnity basis."[14] [citations omitted]

Defendants' Submissions

[24] In this case, the defendants acknowledge that the plaintiffs were entirely successful at trial, and that the Contract relevantly:

(a) entitled the plaintiffs (as buyer) to affirm the Contract under clauses 9.1 and 9.3 and sue the defendants for damages, specific performance or damages and specific performance; and

(b) entitled the plaintiffs to claim damages for any loss it suffered as a result of the defendants' default, including its legal costs on an indemnity basis.

[25] The defendants referred to of *Chen v Kevin McNamara & Son Pty Ltd (No. 2), Willmott v McLeay*, *Storey v Britton* and *Clancy v Carlson* and submitted that the costs of the proceeding should be assessed on the standard basis because of the following matters

(a) the correct starting point is that the costs are in the discretion of the Court, and the plaintiffs are not entitled to indemnity costs;

(b) a "special" basis of assessment is not given simply because the Contract provides for the same;

(c) the current proceeding can be distinguished from those decisions identified above as having a discretionary factor which militates against the making of a "special" basis of assessment, relevantly:

(i) The defendants were mistaken as to the purchase price at the point of execution of the Contract and had relied on others in executing the Contract (the real estate agents). This fact was only conceded for the first time on the day of trial;

(ii) The evidence on which the defendants were required to rely was outside their direct control or knowledge given the relevant communications

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13 *Storey v Britton [No 2]* [2025] QSC 151.
14 Ibid, [17]-[19].

which served the basis of the Court's ultimate findings (i.e. whether the plaintiffs had made the higher offer conditional upon the purchase of the furniture, or whether there were two offers open at the relevant time) were between Mrs Beck and the real estate agents.

(iii) Other authorities related to positive acts or omissions of the defaulting party leading to a damages or specific performance claim. For example, in *Storey v Britton*, the relevant issues were based on, inter alia, alleged failures to pay deposits and the affirmation of the contract allegedly being without prejudice. The sellers in that case were not a true mistaken party at the time of entry into the Contract but may be regarded as the defaulting party with knowledge of their acts; and

(d) the Contract entitling a claim to an indemnity basis of assessment, as a factor of the exercise of discretion, should not lead to a "special" basis of assessment. The fair order for costs in the exercise of discretion is a standard basis of assessment.

[26] Alternatively, the defendants submit that if an indemnity assessment is to be given based on the contractual provision, such an assessment should only apply to the relevant "event" of the claim to damages, given the entitlement to claim such an assessment is intrinsically tied to a claim for damages (not specific performance).[15]

[27] Thus, the defendants submit any indemnity assessment should only be given for a part of the proceeding reflecting the claim for damages.

[28] The defendants acknowledge that there is some mutuality in the issues necessary to prove the claim for specific performance and damages, but submit that the Court can apply a proportionate approach and award 20 percent of the costs to be assessed on the indemnity basis or that indemnity costs could only be awarded from 3 March 2025 as relating to the damages claim, particularly where:

(a) the actual evidence of loss and damage was not substantiated until Mr Beck swore his affidavit on 3 March 2025 which provided admissible evidence of the rental loss; and

(b) with short notice of this evidence, the defendants appropriately conceded the quantum of such a claim shortly after the trial.

Consideration

[29] In this case, the plaintiffs are entitled to costs on an indemnity basis under the Contract.

[30] On its plain terms, clause 9.8 entitles the plaintiffs to their legal costs of the proceeding on an indemnity basis.[16] The parties have plainly and unambiguously elected that, in these circumstances, the Becks would be entitled to their costs on an indemnity basis.[17] The parties' bargain about costs ought to be respected.[18]

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15 Citing *Willmott* and *Storey*.
16 *Storey v Britton [No 3]* [2025] QSC 307 at [9].
17 *Chen v Kevin McNamara & Son Pty Ltd (No 2)* [2012] VSCA 229 at [8].
18 *Storey v Britton [No 3]* [2025] QSC 307 at [12].

[31] As stated by Fraser JA in *Platinum United II Pty Ltd v Secured Mortgage Management Ltd (in liq)*:

> "The general principle is that a mortgagee is ordinarily limited to party and party costs (or "the standard basis of assessment" in r 702 of the Uniform Civil Procedure Rules 1999 (Qld) ('UCPR')) but a court will usually exercise the discretion as to costs to give effect to a contractual provision which "plainly and unambiguously" provides for taxation on another basis."[19]

[32] In this case, there is no reason to depart from the contractual agreement and there is no "discretionary consideration that militates against the making of such an order".[20]

[33] I note that the defendants' alternative submission is that an indemnity assessment should only apply to relevant "event" of the claim to damages, given the entitlement to claim such an assessment is intrinsically tied to a claim for damages, rather than specific performance.

[34] Specific performance was awarded to remedy the breach of contract by the defendants. Damages were awarded to compensate for harm arising from that breach, namely the cost of renting alternative accommodation between the contracted settlement date and the date on which settlement actually occurred.

[35] Whilst clause 9.8 entitles the Becks to claim "damages" for any loss suffered as a result of the Kucks' default, I note that in *Storey v Britton [No 3]*, specific performance, and not damages was awarded, yet Freeburn J ordered that the defendants pay the plaintiffs' costs of the proceeding.[21]

[36] In any event, in this case, both specific performance and damages were awarded.

[37] Specific performance was awarded to remedy the defendants' default, and damages were awarded to remedy loss arising from that default. There is no reason that the entitlement to claim the indemnity assessment should only apply to the claim to damages.

[38] Accordingly, the order is that the defendants pay the plaintiffs' costs of the whole of the proceeding on an indemnity basis.

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19 At [6].
20 Referred to in *Chen v Kevin McNamara & Son Pty Ltd (No 2)* at [8].
21 *Storey v Britton [No 3]* [2025] QSC 307 at [17] at [17]-[19].