SUPREME COURT OF QUEENSLAND

CITATION:	*Enyo Lawyers Pty Ltd v Island Resorts (Facilities and Equipment) Pty Ltd* [2026] QCA 133
PARTIES:	**ENYO LAWYERS PTY LTD** (appellant) **v** **ISLAND RESORTS (FACILITIES AND EQUIPMENT) PTY LTD** (first respondent) **ISLAND RESORTS (INFRASTRUCTURE) PTY LTD** (second respondent) **COURAN COVE RESORT COMMUNITY BODY CORPORATE** (third respondent) **BILL KARAGEOZIS IN HIS CAPACITY AS RECEIVER OF COURAN COVE RESORT COMMUNITY BODY CORPORATE** (fourth respondent)
FILE NO/S:	Appeal No 5268 of 2025 SC No 262 of 2023
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2025] QSC 269 (Freeburn J)
DELIVERED ON:	17 July 2026
DELIVERED AT:	Brisbane
HEARING DATE:	2 June 2026
JUDGES:	Boddice JA, Brown JA, Kelly J
ORDERS:	**1. The appeal be allowed.**

2. Paragraph 2 of the Order of Justice Freeburn made on 17 October 2025 in BS 262/23 be set aside.

3. Paragraph 3(c) of the Order of Justice Freeburn made on 15 October 2024 in BS 262/23 be varied and replaced with the following orders:

"(c) Thirdly, and from such money as may be realized and/ or received from or on behalf of:

i. The Proprietors of Couran Cove Resort – Eco Lodges – GTP 106783 in respect of paragraph 3 of the order made 11 November 2022 in BS601/21 to Enyo to satisfy, as far as

possible, its equitable interest in paragraph 3 of the order made on 11 November 2022 in BS601/21;

ii. The Proprietors of Couran Cove Resort – Broadwater Villas – GTP 106807 in respect of paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22 to Enyo to satisfy, as far as possible, its equitable interest in paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22;

(d) Fourthly, to the plaintiffs and Enyo Lawyers Pty Ltd pari passu, as far as possible, in respect of their respective judgments at paragraph 1 against the defendant plus accrued interest on those judgments and in respect of the plaintiff their costs of the application."

4. The fourth respondent's costs of the appeal are costs of the receivership.

5. The appellant and first and second respondents provide submissions of no more than 3 pages as to the appropriate orders as to costs in the event those orders cannot be agreed.

CATCHWORDS: CORPORATIONS – RECEIVERS, CONTROLLERS AND MANAGERS – PRIORITY OF DEBTS – where the third respondent is a community title scheme – where the appellant acted for the third respondent in proceedings against two of its subsidiary community title schemes – where the third respondent was awarded costs orders in those proceedings – where a receiver was appointed to the third respondent to recover debts owed to the first and second respondents – where the appellant obtained judgment against the third respondent in respect of unpaid legal fees – where the appellant was joined as a creditor in the receivership – where the appellant claimed an equitable lien in the costs orders – where the appellant sought priority in the receivership over monies recovered by the receiver pursuant to the enforcement of the costs orders – whether the primary judge erred in refusing to grant the appellant priority in respect of monies recovered pursuant to the costs orders – whether the appellant should have priority in respect of monies recovered by the receiver pursuant to the costs orders

CORPORATIONS – RECEIVERS, CONTROLLERS AND MANAGERS – PRIORITY OF DEBTS – where the receiver's primary ability to raise funds was by issuing contribution notices to the third respondent's subsidiary bodies corporate – whether the primary judge erred in finding there was no fund in existence at the time to which the appellant's lien could attach – whether the primary judge erred in finding the appellant was seeking priority over monies generally raised through the contribution levies – whether the primary judge erred in finding there was no causal connection between the efforts of the receiver in issuing contribution notices and the professional work of the appellant

Ex parte Patience; Makinson v The Minister (1940) 40 SR (NSW) 96; [1940] NSWStRp 11, considered
Firth v Centrelink (2002) 55 NSWLR 451; [2002] NSWSC 564, considered
GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore (2023) 280 CLR 442; [2023] HCA 32, cited
Philippa Power & Associates v Primrose Couper Cronin Rudkin [1997] 2 Qd R 266; [1997] QCA 3, considered
Re De Groot [2001] 2 Qd R 359, considered
Warren v Coombes (1979) 142 CLR 531; [1979] HCA 9, cited
Worrell v Power & Power (1993) 46 FCR 214; [1993] FCA 551, considered

COUNSEL: B W J Kidston, with H Nosworthy, for the appellant
D O'Brien KC, with M Patterson, for the first and second respondents
No appearance for the third respondent
A I O'Brien KC for the fourth respondent

SOLICITORS: Gear & Co Lawyers for the appellant
Hickey Lawyers for the first and second respondents
No appearance for the third respondent
RBG Lawyers for the fourth respondent

[1] **BODDICE JA:** Brown JA's comprehensive summary of the factual background and applicable legal principles, which I gratefully adopt, allows me to briefly state my reasons for agreeing that this appeal should be allowed.

[2] First, it is accepted by the parties that an equitable lien arises in favour of Enyo in relation to any costs recovered pursuant to the costs orders. Such an equitable lien was not dependent upon a declaration first being sought by Enyo, or on there being in existence at the time of the application, a special fund in respect of those costs.

[3] Second, whilst the primary judge was correct in refusing to make orders which asserted an equitable lien over general funds recovered by reason of the receiver having issued contribution notices, the submissions made by Enyo, at the hearing below, clarified that the orders sought related to costs recovered pursuant to the costs order, rather than funds generally recovered by the receiver.

[4] Third, although it is understandable that the primary judge relied heavily on the form of draft order proffered by the party seeking the orders, the clarification in oral submissions supports a conclusion that the primary judge erred in refusing to make orders in relation to Enyo's equitable lien.

[5] Fourth, there is no utility in deferring the making of such orders now, notwithstanding that there is no evidence of available funds in relation to the costs orders. The

receiver's obligation is to recover assets of CBC, which would include recovery pursuant to the costs orders. I agree with Brown JA that in those circumstances, Enyo is entitled to seek the assistance of the Court to protect and enforce its equitable rights to priority to be paid out of any monies recovered by the receiver, pursuant to the costs orders.

[6] I agree with the orders proposed by Brown JA.

[7] **BROWN JA:** The question for the present appeal is whether the primary judge erred in not making an order granting priority in a receivership for payment in favour of the appellant, Enyo Lawyers Pty Ltd (Enyo), as a result of Enyo claiming an equitable lien as a consequence of cost orders made in favour of its client, who is also the third respondent, the Couran Cove Resort Community Body Corporation (CBC), for whom Enyo acted in 2022 and 2023.

Factual background

[8] The relevant facts were uncontentious between the parties.

[9] CBC is the principal body corporate in a layered community title scheme under the *Mixed Use Development Act 1993* (Qld) commonly known as "Couran Cove". Enyo acted for CBC in certain proceedings against The Proprietors of Couran Cove Resort – Eco Lodges – GTP 106783 (Eco Lodges) and The Proprietors of Couran Cove – Broadwater Villas – GTP 106807 (Broadwater Villas), who are two of the subsidiary bodies corporate in the scheme.

[10] On 11 November 2022, three costs orders were made in those proceedings in favour of CBC against Eco Lodges and Broadwater Villas.

[11] The first and second respondents provided infrastructure services under various written agreements to CBC which were ultimately for the benefit of individual lot owners. The fees for those services were not paid by CBC and ultimately they obtained default judgment against CBC for $13,760,052.19 in March 2023, which led to the appointment of the fourth respondent as receiver on 15 October 2024.

[12] On 15 October 2024, an order was made appointing the fourth respondent, Bill Karageozis, as receiver of CBC (receiver) in proceedings BS 262/23 for the purpose of getting in and receiving for the first and second respondents the amounts owing under the default judgment entered by the Registrar on 23 March 2023 in the sum of $13,760,052.19. Various express powers were also given to him by that order.

[13] By a further order made on 15 October 2024 in proceeding BS 3364/24, the receiver was appointed receiver of four of the subsidiary schemes, including Eco Lodges and Broadwater Villas, for the purpose of getting in and receiving for CBC the amounts owing under certain judgments in favour of CBC against those four subsidiary schemes.

[14] CBC failed to pay Enyo for the legal fees incurred as a result of acting on its behalf in relation to the Eco Lodges proceeding and Broadwater Villas proceeding. On 17 March 2025, judgment was entered in the District Court in favour of Enyo against CBC in the sum of $361,741.01 (Enyo judgment). That judgment remains almost wholly unsatisfied. Enyo sought to enforce its judgment against CBC.

[15] On 1 August 2025, with the agreement of Enyo, the receiver made an application to vary the order appointing the receiver to include the following orders:

(a) that his appointment as receiver be extended to act as receiver for the purpose of getting in and receiving the assets of CBC to satisfy the Enyo judgment; and

(b) that paragraph 3(c) of the order be varied so that all money realised from his receipt of CBC's property and assets be paid (after his costs and remuneration) to the first and second respondent and Enyo *pari passu*, as far as possible in respect of their respective judgments obtained against the CBC, accrued interest and the first and second respondents' costs of an earlier application.

[16] At the hearing, there was no contest that the receiver also be appointed on Enyo's behalf and that his appointment be extended to include recovery in relation to the Enyo judgement. At the time the application was filed, it seems that Enyo accepted in relation to the Enyo judgment that it was, like the first and second respondents, an unsecured creditor of CBC and that the collections of the receiver ought to be paid *pari passu* between them. That remains the case.

[17] However, at the hearing of the application, Enyo also sought an additional order giving priority to it in respect of the costs orders made in CBC's favour in the Eco Lodges and Broadwater Villas proceedings. Enyo contended that it had an equitable interest in those cost orders in the form of a lien arising out of the fruits of the litigation. In particular, Enyo relied on the summary of principles set out by Campbell J in *Firth v Centrelink*.[1]

[18] A draft order was provided by Enyo's counsel to the primary judge which sought to incorporate a provision providing for Enyo's priority in respect of the Eco Lodges cost order and the Broadwater Villas costs orders as well as other machinery provisions in that regard. The form of draft order provided for Enyo to have priority over the judgment debts of the first and second respondent, and the Enyo judgment, in respect of all monies received by the receiver from Eco Lodges and Broadwater Villas, no matter whether it was attributable to the costs orders or otherwise, to meet the quantum of Enyo's outstanding costs in those proceedings.

[19] The form of order sought by Enyo relevantly included the following:

> "…
>
> 5. Paragraph 3 of the Orders be varied as follows:
>
> '(c) Thirdly, and from such money as may be realized and/or received from or on behalf of:
>
> i. The Proprietors of Couran Cove Resort – Eco Lodges – GTP 106783 to Enyo to satisfy, as far as possible, its equitable interest in paragraph 3 of the order made on 11 November 2022 in BS601/21;
>
> ii. The Proprietors of Couran Cove Resort – Broadwater Villas – GTP 106807 to Enyo to satisfy, as far as possible, its equitable interest in paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22;

---

1 (2002) 55 NSWLR 451 at [35].

> (d) Fourthly, to the plaintiffs and Enyo pari passu to satisfy, as far as possible, their respective judgments at paragraph 1 against the defendant, plus accrued interest and costs of this application and the application filed 1 August 2025, unless otherwise agreed by the [first and second respondents] and Enyo in writing.'
>
> …"

[20] The orders sought in respect of priority arising out of the cost orders were opposed by the first and second respondents on the basis that they could not see a basis for Enyo having the priority sought. No application was filed by Enyo prior to appearing at the hearing. Counsel for the first and second respondents and the fourth respondent indicated that they were somewhat caught by surprise by the form of order sought.[2] That is a matter disputed by Enyo on the basis of the correspondence exchanged. Nothing turns on that for the purposes of deciding this appeal, although it may have relevance to costs.

The decision below

[21] The primary judge identified the issue to be whether Enyo was entitled to priority over other unsecured creditors by reasons of their "fruits of litigation" lien.

[22] The primary judge accepted that Enyo claimed its priority based on an equitable interest by virtue of a particular lien in the cost orders to be paid by Eco Lodges and Broadwater Villas to CBC.

[23] The primary judge identified the issue to have been fought on the basis of competing orders between Enyo and the receiver.

[24] The primary judge refused to make the orders sought by counsel for Enyo in respect of the costs orders. That was for a number of reasons.

[25] First, the primary judge observed that Enyo had not made an interlocutory application for a declaration as to the existence of the lien. His Honour identified that if such an application were made, CBC may wish to be heard on that issue.

[26] Secondly, the primary judge considered that even if the lack of an application for a declaration could be overcome, it was still inappropriate for the equitable relief sought by Enyo to be granted. He identified the equitable lien alleged to exist by Enyo to be no more than an inchoate right to seek the court's assistance in equity. The lien was not a property right (as Enyo argued), albeit that it did exhibit some of the characteristics of equitable proprietary rights. He considered that Enyo did not have a property right that entitles it to be regarded as a secured creditor and entitled to payment in priority of unsecured creditors.

[27] Thirdly, the primary judge stated that the question in each case was whether the court should in the circumstances exercise its discretion to enforce the solicitor's equity, which required the court to frame its order on the basis of the minimum necessary to protect the solicitors. He identified that in this case there were a number of obstacles to the exercise of the discretion:

---

[2] Counsel for the third respondent had withdrawn for the hearing of the application.

(a) first, there was in this case no special fund or asset to which Enyo sought to attach its particular lien. His Honour noted that the receiver was presently standing in the shoes of CBC and raising funds through issuing contribution notices to its subsidiary bodies corporate. He considered that "Enyo Lawyers seeks to engraft its claim onto funds raised by the receiver from time to time by the use of his powers as receiver in issuing contribution notices";[3]

(b) secondly, that there was no real connection between the efforts of the receiver in raising the funds by means of contribution notices referred to in (a) and the professional work of Enyo such that a causal connection was established. The only connection between the first and second respondents and Enyo were that they are judgment creditors owed money by CBC;

(c) thirdly, if the receiver was to raise funds by reason of contribution notices, there was no logical reason why Enyo should have preference or priority over other CBC creditors.

[28] His Honour therefore determined not to make the orders sought.

Contended errors as to the fund over which priority sought and exercise of discretion

[29] There was no contest between the parties upon appeal as to the relevant legal principles or that prima facie an equitable lien did arise in favour of costs in respect of the costs orders.

[30] Although four grounds of appeal are raised by the appellant, the real issue in the appeal is whether the primary judge erred in finding that Enyo was seeking to engraft its claim onto funds raised by the receiver from time to time as a result of issuing contribution notices as opposed to funds raised by the receiver pursuant to the enforcement of the costs orders and that, as there was no specific fund to which the lien could attach, the orders sought should be refused.

[31] The first and second respondent contend that absent a specific fund to which the lien could attach the primary judge's decision was correct and the appeal should be upheld. The fourth respondent adopted a neutral position.

Legal principles

[32] The relevant legal principles were conveniently summarised by Campbell J in *Firth v Centrelink*[4] at [35]:

> "…
>
> (a) The solicitor's right exists over money recovered through obtaining judgment in litigation, and also over money recovered through the settlement of litigation.
>
> (b) The solicitor's right exists over both the amount of a judgment in favour of the client, and the amount of an order for costs in favour of the client….

---

3 *Island Resorts (Facilities and Equipment) Pty Ltd & Island Resorts (Infrastructure) Pty Ltd v Couran Cove Resort Community Body Corporate* [2025] QSC 269 (Reasons) at [25].

4 (2002) 55 NSWLR 451.

(c) It exists over money which is in the possession of the solicitor, and also over money which is in court and money which is owed to the client but not paid into court.

…

(e) <u>For the right to arise it must be shown that there is a sufficient causal link between solicitor's exertions and the recovery of the fund of money</u>.

(f) <u>The quantum of money for which the solicitor has the equitable right is the amount which is properly owing to the solicitor by the client, whether that amount be ascertained by taxation of a bill of costs, or assessment, or pursuant to a costs agreement</u>. In relation to those situations where taxation is necessary to ascertain the quantum owing to the solicitor, <u>the solicitor's right exists in the fund prior to the occurrence of the taxation</u>.

(g) <u>The solicitor's equitable right exists before the court is asked to intervene to protect it; it 'arises immediately upon the recovery of monies through the exertions of the solicitor';</u> <u>if the lien is over the proceeds of an order for costs, it comes into existence at the time of making of that order for cost</u>. If the lien is over the proceeds of a settlement, it arises when the settlement agreement is entered into. (These statements concern when the lien comes into existence as an item of present property — they are not concerned with the ability of the solicitor to deal with the rights under the lien as future property before the fund is in existence.)

(h) The right of the solicitor is one which the solicitor can enforce against the client, entitling the solicitor to an injunction to prevent the payment of the fund to the client without notice to the solicitor until such time as the quantum of the solicitor's entitlement to be paid from the fund is ascertained. If the quantum of the solicitor's entitlement has been ascertained, the solicitor is entitled to an order that the amount of his entitlement be paid to him from the fund, notwithstanding opposition from the client.

…

(j) If the client is a company which goes into liquidation, the solicitor is entitled, in relation to costs arising from work done before the start of the liquidation, to claim the full amount of the costs from the fund, and is not required to prove in the liquidation. This has the same practical effect as enforcing the right against the other creditors of the company. The solicitor's lien attaches to property recovered through his exertions, even if the actual recovery occurs after the client goes into liquidation.

…"

(citations omitted and emphasis added)

[33] Justice Campbell in *Firth* stated that in all of the circumstances which he had set out it was "apparent that the equitable right which a solicitor has to be paid costs and disbursements from the fund which his efforts have recovered, is a kind of proprietary interest in that fund."[5] His Honour observed that the view that the lien was a proprietary interest was not necessarily universally held as discussed by Muir J in *Re De Groot*.[6]

[34] In *Re de Groot*, Muir J discussed the nature of a solicitor's lien and in particular the question of whether it took priority over other equitable interests in the settlement monies. Having made extensive reference to case law, Muir J noted the parallel with the priority given to trustees, liquidators and receivers in recovering expenses incurred and in being renumerated for their service over the interests of debenture holders or equitable assignees of property, which had also been a matter referred to by Macrossan CJ and White J in *Philippa Power & Associates*.[7] Justice Muir observed that "in principle, the nature and extent of a solicitor's claim on the fund should not depend on whether the fund is in court. The competition between equitable interests falls to be determined by considerations other than the location and possession of the fund. Rather it is concerned with the application of general principles …".[8]

[35] Justice Muir noted that (at [69]):

> "…The rationale for the concept of a particular lien appears to rest on the solicitors being instrumental in bringing the subject fund into existence …."[9]

[36] Justice Campbell in *Firth* noted that Muir J did not cast doubt on the proposition that the right of the solicitors in the fund amounted to an equitable interest.[10] His Honour described the nature of the right which the solicitor has concerning the fruits of his effort to be a right to be paid out of the asset albeit that he does not have full title to the fund.[11]

[37] In *Worrell v Power & Power*[12] the Full Federal Court[13] also confirmed that equitable rights under the solicitor's lien arise before there is a fund in court and before the judgment for the costs has been quantified by taxation. The Court found that a solicitor's lien in respect of a judgment for costs involves more than a personal right of the solicitor to approach the Court to obtain a charging order. The equitable right giving rise to the solicitor's lien was found to have arisen when the judgment for costs was obtained and before there has been a taxation of the costs. The assistance of the Court was identified as being invoked not to create such rights but to enforce them.[14]

---

5 (2002) 55 NSWLR 451 at [38].
6 [2001] 2 Qd R 359.
7 *Philippa Power & Associates v Primrose Couper Cronin Rudkin* [1997] 2 Qd R 266 at [50] and [53].
8 [2001] 2 Qd R 359 at [70].
9 His Honour referred to *Worrell* and *Philippa Power & Associates*.
10 (2002) 55 NSWLR 451 at [39].
11 (2002) 55 NSWLR 451 at [41].
12 (1993) 46 FCR 214 at 222, followed in *Philippa Power & Associates v Primrose Couper Cronin Rudkin* [1997] 2 Qd R 266 at 271-273.
13 Consisting of Wilcox, Ryan and Gummow JJ.
14 (1993) 46 FCR 214 at 223-4 following *Ex parte Patience; Makinson v The Minister* (1940) 40 SR (NSW) 96, particularly the reasons of Jordan CJ at 103.

[38] The equitable right of a solicitor has been described as a "particular lien" because it applies only to the particular asset which had been recovered.[15]

Priority was sought only over the fund for costs orders which were recovered

[39] Enyo contends that it well settled law that a court's order for costs in favour of a client is a fund to which a solicitor's equitable lien can attach.[16] That is uncontroversial. Similarly, consistent with the principles set out above, it is uncontroversial between the parties that the lien arises prior to the court's intervention at the time the order for costs is made.[17] The cost orders are a chose in action, distinct from the fund of money to which the solicitor's lien attaches. For the particular lien to come into existence over a fund, the fund must be created by enforcement of the chose in action.

[40] Enyo contends that the primary judge was in error in finding that it was necessary for it to have applied for a declaration. There was no such error. While the primary judge did refer to the fact that Enyo had not sought a declaration as to the existence of its particular lien, he did not dismiss Enyo's application on that basis.

[41] Secondly, the appellant complains that the primary judge erred in finding that there "is no special fund or asset to which Enyo Lawyers seeks to attach its particular lien".[18] At least in terms of the reference to there being no specific fund, the primary judge was correct. The costs orders had not been enforced by the receiver to create such a fund.

[42] It is evident from his Honour's reasons that he understood Enyo was seeking to assert its rights over a more general fund. That error is understandable. The draft form of order provided by Enyo was not limited to monies recovered by the receiver pursuant to the costs orders against Eco Lodges and Broadwater Villas but purported to give Enyo priority over "such money as may be realized and/or received from and/on behalf of [Eco Lodges] to Enyo to satisfy, as far as possible, its equitable interest in paragraph 3 of the order made …".[19]

[43] That had further significance in the hearing of the application, insofar as Enyo's counsel submitted that Enyo was to be regarded in effect as a secured creditor and entitled to payment in priority of unsecured creditors, which the primary judge found was unjustified. Those representations by Enyo were apt to suggest that this was a case of competing priorities to the moneys recovered generally by the receiver, rather than a case where any priority enjoyed by Enyo was confined to those monies recovered pursuant to the enforcement of costs orders considered the fruits of litigation.

[44] Thus, the primary judge considered that "Enyo Lawyers seeks to engraft its claim onto funds raised by the receiver from time to time by the use of his powers as receiver in issuing contribution notices".

[45] The primary judge and counsel for the first and second respondent incorrectly understood that Enyo was seeking priority, arising out of an equitable lien, over funds

---

15 *Philippa Power & Associates v Primrose Couper Cronin Rudkin* cited by Campbell J in *Firth* at [42].

16 See for example *Firth v Centrelink* (2022) 55 NSWLR 451 at [35(f)].

17 *Worrell v Power & Power* (1993) 46 FCR 214 at 224.

18 Reasons at [23].

19 That was followed by a substantively identical provision in relation to the Broadwater Villas costs orders.

raised by the receiver by issuing contribution notices to Eco Lodges and Broadwater Villas. The purpose of and source of authority to levy those contribution notices included recovering the outstanding levies owed to CBC for which judgment had been obtained and was not limited to the funds recovered from the enforcement of the cost orders.

[46] In its submissions at the hearing, Enyo identified that as a result of the costs orders made it had an equitable interest in those orders, due to its "fruits of litigation" lien and referred to the decision of Campbell J in *Firth*.[20] Enyo further referred to the fact that it had equitable rights from the time the costs orders were made by the Court even though there had been no recovery. Since the receiver was appointed to recover all of the assets of CBC, Enyo contended that notwithstanding there was no fund of money to which the lien could then attach, the costs order was a chose in action and an asset of the CBC and once recovered by the receiver it was entitled to priority over any funds recovered.[21]

[47] Enyo's position was further supported by the fact that after the hearing but before judgment Enyo referred to the primary judge the case of *Worrell v Power & Power*, in which the Court stated:[22]

> "[I]t follows that the primary judge correctly concluded that upon the making of the order for costs on 28 May 1991, the solicitors, because the order had come about by reason of their exertions, had equitable rights in the order, which arose forthwith .... In particular, although the solicitors acquired no legal title to the right of Mr Wedgwood to receive the costs, they acquired a right which was analogous to that which would be created by a present equitable assignment of the benefit of the costs order; that brought with it a right to have their costs paid out of the moneys which were subsequently received in February 1992."

[48] The primary judge fell into error in regarding Enyo was seeking priority rights to monies generally raised through contribution levies by the receiver from Eco Lodges and Broadwater Villas and not appreciating that Enyo was asserting equitable rights that arose upon the making of the costs orders and the priority sought was confined to what was recovered in respect of those orders. While the particular lien could only be enforced against monies recovered under the costs orders, and there was no fund in existence at the time of the hearing before the primary judge, the costs orders were nevertheless a chose in action and an asset of the CBC which the receiver was authorised to recover.

[49] Although Enyo's submissions in this appeal made it clear the nature of the particular lien it was asserting was confined to what was recovered pursuant to the costs orders, the incorrect form of order sought by Enyo was perpetuated in its notice of appeal and not clarified until it identified an amended form of order in reply. By that draft form of order Enyo made clear that it was seeking priority only in respect of the monies which were recovered in respect of the costs orders. Enyo contended that the draft orders it sought below should be amended as follows:

> "4. Paragraph 3(c) of the order of Justice Freeburn dated 15 October 2024 be varied and replaced with the following:

---

20 AB Vol 2 p 23, 421 and 423-4.
21 AB Vol 2 p 425/4-8.
22 (1993) 46 FCR 214 at 224.

> '(c) Thirdly, and from such money as may be realized and/ or received from or on behalf of:
>
> i. The Proprietors of Couran Cove Resort - Eco Lodges - GTP 106783 in respect of paragraph 3 of the order made 11 November 2022 in BS601/21 to Enyo to satisfy, as far as possible, its equitable interest in paragraph 3 of the order made on 11 November 2022 in BS601/21;
>
> ii. The Proprietors of Couran Cove Resort - Broadwater Villas - GTP 106807 in respect of paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22 to Enyo to satisfy, as far as possible, its equitable interest in paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22;…'"
>
> (emphasis added)

[50] As is evident from the legal principles set out above, a solicitor has an equitable right in the fruits of litigation, in this case the costs orders, from the time of the making of the order, not the recovery of the funds pursuant to the order.[23] As the costs orders were a chose in action and property of CBC at the time of the application, there was an asset which was subject to the equitable rights in relation to which Enyo could claim an entitlement to priority albeit there was no fund to which the particular lien could attach at the time. Such a fund may come into existence in the future. Paragraph 2 of the orders appointing the receiver provided, inter alia, that the receiver was to ensure "the realisation of property (whether present or future) of [CBC] and of all and any right, title and interest of [CBC] in and to any property…".[24]

[51] In those circumstances, the primary judge was in error insofar as he determined that there was no asset over which Enyo could attach its lien and that Enyo was seeking to engraft its claim onto funds raised by the receiver from time to time by the use of his power as receiver in issuing contribution notices.

[52] The further error identified by Enyo is that the primary judge observed that there was no causal connection between the efforts of the receiver in raising funds by contribution notices and the professional work of Enyo. That was not the relevant causal connection necessary to establish the lien. That reference was made in the context of the primary judge acting on the basis that what Enyo was seeking was priority from any monies realised or received from Echo Lodges or Broadwater Villas. As stated above that understanding was incorrect.

[53] The relevant causal connection that had to be established was between the solicitor's exertions and the recovery of the fund of money the subject of Enyo's equitable interest. It is sufficient that the solicitor acted for the client in proceedings in which the costs order was obtained.[25] That connection was established on the facts in the present case.

[54] As to the fourth ground of appeal, namely that the learned judge erred by failing to order that Enyo was entitled to receive any funds collected by the receiver pursuant

---

23 (2002) 55 NSWLR 451 at [35(g)].

24 [2] of the Order made 15 October 2024 in BS 262/23; AB Vol 1 p 8.

25 *Ex parte Patience; Makinson v The Minister* (1940) 40 SR (NSW) 96 at 100.

to the costs orders in priority to other creditors, paragraph 28 of the primary judge's reasons referred to the fact that where the receiver raises funds by way of contribution notices, there was no logical reason for the court to exercise its discretion to grant Enyo priority. Although there is some debate in the parties' submissions as to whether the decision was discretionary or whether there is only one correct answer such that the *Warren v Coombes*[26] standard applies, that is not a matter which makes a difference to the outcome in the present case. Enyo relies on the wrong premise on the part of the primary judge in not acting on the basis that funds could be raised by enforcing the costs orders. That was a wrong premise upon which the primary judge acted, leading to error, whether it be in the exercise of his discretion to grant an order or whether such an order could be granted. That said, the question of whether a party has a particular lien or not is one to which there is only one legally permissible answer such that the correctness standard would apply.[27]

Should Enyo have priority in respect of monies recovered pursuant to the costs orders

[55] There was no disagreement on this appeal that Enyo is entitled to an equitable lien in respect of the proceeds from an order for costs. Nor was there any dissension from the amended draft order in paragraph 3(c) in the appellant's reply submissions by any of the respondents.

[56] The first and second respondent however contend that unless and until a fund was created in respect of the cost orders, to which the lien could attach, no order should be made. The first and second respondent also contend that argument is strengthened by the fact that there is a real question of whether there will be such recovery by the receiver. They assert that the only way to raise funds was by way of levies. They also raise the possibility that another party may claim an interest in the monies when a fund comes into existence. They therefore contend that the order sought by the appellant is premature and should not be made. There is little merit in that proposition for the reasons outlined below.

[57] The fourth respondent does not adopt a position other than to point out that the receiver is permitted to take into account, in reserving and allocating funds, essential services. He contends that may require the Court to make further directions if funds received are impressed with the equitable lien of Enyo.

[58] It is part of the receiver's role to recover assets of CBC. That would generally include the recovery of choses in action such as the costs orders. While there is evidence that CBC lacks assets and its only monies are raised through levies, that does not affect the possibility that there would be available assets against which the costs orders could be enforced against Eco Lodges and Broadwater Villas and monies recovered. The evidence did not suggest that there was no utility in such an order being made.

[59] To the extent monies are recovered in respect of the costs orders, Enyo has an equitable right to be paid its costs out of the monies recovered. Neither the existence of the particular lien nor the granting of a priority to be paid limited to monies recovered in satisfaction of the costs orders was disputed by the respondents on appeal. Enyo has an equitable right to be paid out of any monies recovered in respect of the costs orders. The matters raised by the first and second respondent do not create any proper basis for not granting the order sought.

---

26 See *Warren v Coombes* (1979) 142 CLR 531 at 549.

27 *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 280 CLR 442.

[60] In the context of a receivership where the receiver's role extends to recovery of all assets of CBC, and in circumstances where other orders were being made concerned with the priority of payment of monies recovered by the receiver,[28] Enyo was entitled to seek the assistance of the Court to protect and enforce its equitable rights by an order granting Enyo priority to be paid out of monies recovered in respect of the costs orders by the receiver. No other party had claimed an interest in any fund created by the enforcement of the costs orders. There is no reason an application could not be made in that regard in the future by an interested party should it arise.

[61] In those circumstances, the appeal should be allowed and an order made giving priority in respect of Enyo's equitable interest arising out of the costs orders in respect of monies recovered pursuant to those orders.

[62] Enyo also sought to make changes to paragraph 3(d) of the orders, which was originally 3(c) of the Orders of 15 October 2024. Although these amendments were advanced in the notice of appeal, they were not the subject of specific submissions and no party took issue with the proposed amendments when asked.

[63] The amendment changing the first word from "thirdly" to "fourthly" follows from the insertion of 3(c). The reference to paragraph 1 is also a necessary variation to give clarity to the judgments being referred to in light of paragraph 3(c) being inserted as an additional order. As to the proposed amendment "costs of this application and the application filed 1 August 2025 unless otherwise agreed by the plaintiffs and Enyo in writing" to be inserted rather than "…in respect of the plaintiff[sic], their costs of the application" in the order made by the primary judge, that amendment may be addressed as part of the submissions as to costs in the event that the appropriate orders as to costs cannot be agreed.

[64] The parties wish to be heard further as to costs, save that the fourth respondent seeks its costs as costs in the receivership. It is uncontroversial that such an order should be made in favour of the fourth respondent as receiver. One would hope, in the circumstances where a receiver has been appointed and the confusion that arose below was contributed to by both the appellant and the first and second respondents, that some agreement can be worked out between the parties to avoid incurring further costs. However, any such submissions should be filed and served within fourteen days of the delivery of judgment failing such agreement and will be determined on the papers.

[65] The Orders that should be made are that:

1. The appeal be allowed.

2. Paragraph 2 of the Order of Justice Freeburn made on 17 October 2025 in BS 262/23 be set aside.

3. Paragraph 3(c) of the Order of Justice Freeburn made on 15 October 2024 in BS 262/23 be varied and replaced with the following orders:

"(c) Thirdly, and from such money as may be realized and/ or received from or on behalf of:

i. The Proprietors of Couran Cove Resort – Eco Lodges – GTP 106783 in respect of paragraph 3 of the order made

[28] In relation to the receiver's costs and remuneration.

11 November 2022 in BS601/21 to Enyo to satisfy, as far as possible, its equitable interest in paragraph 3 of the order made on 11 November 2022 in BS601/21;

ii. The Proprietors of Couran Cove Resort – Broadwater Villas – GTP 106807 in respect of paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22 to Enyo to satisfy, as far as possible, its equitable interest in paragraphs 1 and 2 of the order made on 11 November 2022 in BS7113/22;

(d) Fourthly, to the plaintiffs and Enyo Lawyers Pty Ltd pari passu, as far as possible, in respect of their respective judgments at paragraph 1 against the defendant plus accrued interest on those judgments and in respect of the plaintiff their costs of the application."

4. The fourth respondent's costs of the appeal are costs of the receivership.

5. The appellant and first and second respondents provide submissions of no more than 3 pages as to the appropriate orders as to costs in the event those orders cannot be agreed.

[66] **KELLY J:** I gratefully adopt the summary of the factual background and distillation of legal principles contained in the reasons of Brown JA. As her Honour's reasons make clear, on this appeal the parties were in agreement that Enyo was entitled to an equitable lien in respect of any proceeds from the costs orders. By the end of the oral argument on this appeal, the respondents did not cavil with the appropriateness of proposed amendments to paragraph 3(c) of the orders of the primary judge, as identified in schedule A to the appellant's outline of argument in reply. Ultimately, the issues for resolution on this appeal were of limited compass. I agree with the reasons of Boddice JA and with the orders proposed by Brown JA.