

SUPREME COURT OF QUEENSLAND

CITATION: *Enyo Lawyers Pty Ltd v Island Resorts (Facilities and Equipment) Pty Ltd [No 2] [2026] QCA 173*

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: Further Orders – Costs

ORIGINATING COURT: Supreme Court at Brisbane – [2025] QSC 269 (Freeburn J)

DELIVERED ON: 11 September 2026

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Boddice JA, Brown JA, Kelly J

ORDER: **The first and second respondents pay the appellant’s costs of the appeal on the standard basis.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where the Court allowed the appellant’s appeal – where the appellant seeks its costs of the appeal on the indemnity basis and its costs of the proceedings below on the standard basis – where the appellant seeks indemnity costs on the basis of Calderbank offers that were not accepted by the first and second respondents – where the appellant did not seek costs at the hearing of the proceedings below – whether the appellant should be awarded its costs of the appeal on the indemnity basis – whether the appellant should be awarded its costs of the proceedings below on the standard basis

COUNSEL: B W J Kidston for the appellant
D P O'Brien, with M D Paterson, for the first and second respondents
No appearance for the third respondent
No appearance 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
No appearance for the fourth respondent

- [1] **THE COURT:** The appellant was successful in the appeal of this matter. It seeks its costs of the application below on a standard basis and costs of the appeal on an indemnity basis.
- [2] The appellant seeks the costs of the application below on the basis that given its success in the appeal it should have succeeded in its application filed 1 August 2025.
- [3] It seeks costs of the appeal on an indemnity basis on the basis of Calderbank offers made on behalf of the appellant.
- [4] In response, the first and second respondents contend that the appellant should not have its costs of the application as it did not seek its costs below and the only costs order it sought was that the receiver's costs of the application be the costs of the receivership.
- [5] As to the Calderbank offers, three offers were apparently made on 20 November 2025, 28 May 2026 and 28 July 2026. The first two offers were rejected and a third offer elapsed. In particular, the appellant contends that by its letter dated 28 May 2026, it offered to settle on terms set out in Schedule A of that letter with no order as to costs of the application below or the appeal as between the appellant and the first and second respondents. It contends that the order it achieved was identical to and no less favourable than the terms of the second offer. In those circumstances it contends that the failure to accept the first offer or alternatively the second offer was imprudent and unreasonable.
- [6] The first and second respondents contend that the rejection of the offers in question was not unreasonable. In relation to the first offer the order proposed was in immaterially identical terms to the order handed up by the appellant before Justice Freeburn which was not limited to funds received in respect of the cost order over which the appellant had a lien and required acceptance by all respondents. Given that the order that was presented to Freeburn J went beyond the scope of any such lien, the rejection of the offer was not unreasonable.
- [7] As to the offer of 28 May 2026, which largely reflected the orders made by this Court on the appeal, the first and second respondents contend that the offer was contingent on all respondents accepting the offer or if only accepted by the first and second respondents, it would require the third and fourth respondents to decide to abide by the order of the Court. The first and second respondents therefore contend it was not capable of independent acceptance by the first and second respondents, nor was it appropriate to require the receiver not to participate in the appeal in circumstances where the appeal would have an impact on the receiver's performance of his duties.

The offer itself was in reasonable terms but the conditions upon which it was to be accepted and particularly the requirement that the receiver not to participate in the appeal were not reasonable. It was therefore reasonable for the first and second respondents to reject the offer.

- [8] As to the offer of 28 July 2026, which offered to settle costs on the basis the first and second respondents pay the costs of the appeal and below on a standard basis, it was only open for acceptance for one day. In circumstances where the first and second respondents state that the appellant would otherwise have had no right to indemnity costs, the offer was not a genuine offer of compromise, nor did it provide a sufficient period of time to be genuinely considered. They also contend that for the same reasons stated there was no good basis for the appellant to seek its costs of the hearing before Freeburn J. The time for consideration of the offer was unreasonable. In those circumstances, particularly where it was not evident on the face of the offer that it did offer a genuine compromise given that judgment had been given by this Court, and the position as to costs that had been adopted by the appellant below, it was not unreasonable for the first and second respondents not to accept the offer.
- [9] Given that the appellant did not seek its costs of the application at the hearing below, it is not appropriate for this Court to determine that it should be awarded those costs upon appeal. In any event, given the inconsistency between the submissions made and the terms of the draft order presented on the day, which caused significant confusion both to the parties and the court, the appropriate order would have been no order as to costs.
- [10] The appellant has not established that the first and second respondents acted unreasonably in not accepting the Calderbank offers made and is not entitled to costs on an indemnity basis.
- [11] However, the appellant was successful upon appeal and should be paid its costs of the appeal. It therefore should be ordered that the first and second respondents pay the appellant's costs of the appeal on the standard basis.

Order

- [12] The Order of the Court is:
1. The first and second respondents pay the appellant's costs of the appeal on the standard basis.