

SUPREME COURT OF QUEENSLAND

CITATION: *Jason H Pty Ltd as trustee for the Jason H Family Trust v Habchi [No 2] [2026] QCA 189*

PARTIES: **JASON H PTY LTD**
ACN 658 016 418
AS TRUSTEE FOR THE JASON H FAMILY TRUST
(first appellant)
JASON HABCHI
(second appellant)
JAYHAB DEVELOPMENTS PTY LTD
ACN 142 479 570
(third appellant)
v
HABIB PETER HABCHI
(first respondent)
HABIB HABCHI PTY LTD
ACN 625 469 972
(second respondent)
MONI SALIM HABCHI
(third respondent)
HABCHI TRADING PTY LTD
ACN 660 439 403
(fourth respondent)

FILE NO/S: Appeal No 5729 of 2025
SC No 9265 of 2022
SC No 1372 of 2024
SC No 3450 of 2024
SC No 11432 of 2024

DIVISION: Court of Appeal

PROCEEDING: Further Orders – Costs

ORIGINATING COURT: Supreme Court at Brisbane – [2025] QSC 305 (Freeburn J)

DELIVERED ON: 25 September 2026

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Brown JA, Bradley JA, Doyle JA

ORDER: **The appellants’ costs of the appeal are their costs in the proceedings below.**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where appellants were partially successful on appeal – where respondents made offer to settle after exchange of principal submissions – where the

offer proposed substantially the same outcome as appeal – whether non-acceptance of that offer should affect costs

COUNSEL: A I O'Brien KC, with C J Stackpoole, for the appellants
B W J Kidston for the respondents

SOLICITORS: Bartley Cohen for the appellants
Enyo Lawyers for the respondents

- [1] **THE COURT:** These reasons concern an outstanding issue of costs consequent upon the Court's disposal of the appeal on 11 September 2026. The reasons for judgment in that appeal are reported as [2026] QCA 172.
- [2] In accordance with the orders made that day, written submissions have been exchanged. Relying principally upon the terms of an offer made in a letter of 12 June 2026, the respondents seek an order that the appellants pay the respondents' costs of the appeal on the standard basis. On the other hand, the appellants contend that the appropriate order is that the appellants' costs of the appeal should be their costs in the proceedings, with the respondents to bear their own costs.
- [3] The appellants were partially successful in the appeal. Two of the questions which had been answered by the primary judge were the subject of appeal. In respect of one of them, namely question 3, the appeal was unsuccessful though in the course of this court's reasoning it emerged that the form of the answer given by the primary judge ought to be clarified and this was done by amendment to the primary judge's Order.
- [4] The other question, question 5A, was a matter in respect of which the appellants were wholly successful. In the ordinary course it would be appropriate for the appellants to be given at least part of their costs of the appeal.
- [5] However, by letter dated 12 June 2026, the respondents made an offer to settle the appeal, which offer was open for seven days. The timing of that offer was that the appeal was set for a hearing commencing on 14 July 2026. Submissions had been filed on behalf of the appellants (on 2 March 2026) and submissions in response had been filed by the respondents (on 3 June 2026). The appellants' reply submissions were filed 12 June 2026. The offer was in these terms:
- “We are instructed to, and hereby do, offer to settle the appeal on the basis that ground 12 of the notice of appeal be upheld and, to give effect to same, the parties consent to the following orders being made:
- a. order 1(c) of the orders made on 14 November 2025 be set aside;
 - b. otherwise the appeal be dismissed; and
 - c. the parties' costs of the appeal be each party's cost in the combined proceedings below.”
- [6] Ground 12 of the notice of appeal sought to challenge the primary judge's reasons as inadequate for failing to give proper reasons as to: (i) a common intention constructive trust; or alternatively (ii) as to the requirement that the appellants account for profits from the net proceeds of sale of the 2 City Road property. By the time of the offer, and as a result of the submissions exchanged, the first of these contentions

fell away and the appeal proceeded on the basis of the challenge to the adequacy of the reasons as to the finding of the obligation to account for profits.

- [7] Nonetheless the effect of the orders which were proposed would have been to set aside question 5A, otherwise dismiss the appeal and make all parties' costs of the appeal their costs in the proceedings.
- [8] The offer was not accepted. The respondents urge that in substance the appellants have not done any better in the disposition of their appeal compared with that offer. They further contend that given that at the time the offer was made both parties should have been fully informed of their respective contentions (submissions having been exchanged) in those circumstances seven days was an adequate time for consideration whether or not to accept.
- [9] There is considerable force in the respondents' submission. However, in our view it is not appropriate to require the appellants to pay the respondents' costs on the basis of this offer.
- [10] First, the offer was made after the appeal had progressed significantly to the point of submissions on both sides having been prepared, including reply submissions for the appellants. The respondents were not offering any part of the appellants' costs of the appeal up to the date of the offer. In those circumstances it is difficult to conclude the offer was such that it was unreasonable for the appellants not to have accepted it, or that in the events, the appellants have not done any better on the appeal.
- [11] Second, albeit in our view a very minor consideration, the variation made to the answer given to question 3(b)(ii) was necessary in order to overcome a defect in the form of the order made below. The offer, if accepted, would have precluded that correction.
- [12] Thirdly, we do not believe in all of the circumstances the offer was open for a sufficient period that its non-acceptance within the period should determine the outcome of costs. It is not established that that period was sufficient for those advising the appellants to have time away from their commitments to consider and give proper advice to the appellants.
- [13] Despite these considerations, the costs of the preparation for the argument of the appeal after the date of the offer could have been largely avoided.
- [14] An appropriate balance is to be drawn between the appellants' success on the appeal and the additional costs unnecessarily incurred due to the need to argue a question which between the parties was uncontroversial.
- [15] In the circumstances, in our view, the appropriate order is that which is proposed by the appellants. Accordingly, the order which we would propose is that the appellants' costs of the appeal are their costs in the proceedings below.