

SUPREME COURT OF QUEENSLAND

CITATION: *Alvarez v Sarcilla* [2026] QSC 199

PARTIES: **ANTONIO JOSE ALVAREZ**
(plaintiff)
v
RICHARD SARCILLA
(first defendant)
NT PROFORM CONSTRUCTION PTY LTD
ACN 133 521 285
(second defendant)

FILE NO/S: BS No 978 of 2025

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 17 September 2026

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: McCafferty J

- ORDER:
- 1. The plaintiff pay the first defendant's costs of the application from 14 March 2026 on the standard basis, to be assessed if not agreed.**
 - 2. The plaintiff pay the second defendant's costs of the application from 19 May 2026 on the standard basis, to be assessed if not agreed.**
 - 3. The costs of the application are otherwise reserved.**

CATCHWORDS: PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — COSTS — INTERLOCUTORY PROCEEDINGS — COSTS IN THE CAUSE — where the plaintiff applied for summary judgment — where the defendants filed and served amended defences which rendered the summary judgment application inutile — where the summary judgment application was dismissed by consent — where the ordinary position is that costs be reserved or made costs in the proceeding — where the defendants contend the plaintiff's continued pursuit of the summary judgment application after receipt of the amended defences was unreasonable — whether departure from the ordinary position as to costs is warranted

PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — COSTS — REGULATED

COSTS: GROSS OR FIXED COSTS, LUMP SUM ORDERS — POWER TO ORDER — where the first defendant seeks an order that his costs be fixed — where the first defendant contends that any assessment of costs would be protracted and expensive — whether the evidence adduced sufficiently establishes that the costs sought are reasonable — whether a fixed costs order should be made

Corporations Act 2001 (Cth), s 471B

Uniform Civil Procedure Rules 1999 (Qld), r 299, r 681

Australian Securities and Investments Commission v Atlantic 3 Financial (Aust) Pty Ltd (No 3) [2008] 2 Qd R 298; [2008] QSC 9, cited

Beach Petroleum NL v Johnson (No 2) (1995) 57 FCR 119; (1995) 135 ALR 160, cited

Blue Dog Group Pty Ltd v Credit Suisse Equities (Australia) Limited [2026] QSC 110, cited

Clements v Lillas & Loel Lawyers Pty Ltd [2023] QSC 271, cited

Fairfield Services Pty Ltd (in liq) v Leggett (2020) 5 QR 50; [2020] QSC 183, approved

Harrison v Schipp (2002) 54 NSWLR 738; [2002] NSWCA 213, cited

Leary v Leary [1987] 1 All ER 261; [1987] 1 WLR 72, cited

Molnar v Good Mood Food Pty Ltd [2020] FCA 1242, cited

National Australia Bank Limited v Bhunya Pty Ltd (No 2) [2018] QSC 93, cited

ONE.TEL Ltd v Deputy Commissioner of Taxation (2000) 101 FCR 548; [2000] FCA 270, cited

Re Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin (1997) 186 CLR 622; [1997] HCA 6, cited

State of Qld v Nixon [2002] QSC 296, cited

COUNSEL: J M Manner for the plaintiff
T E Randall for the first defendant
No appearance for the second defendant

SOLICITORS: Grasso Searles Romano Lawyers for the plaintiff
Greystones Lawyers & Corporate Advisors for the first defendant
O’Sullivan Sneddon Law for the second defendant

[1] On 16 July 2026, I made orders, by consent, dismissing an amended application for summary judgment brought by the plaintiff against the first and second defendants. Those orders provided that the issue of costs would be determined on the papers, necessarily in circumstances where there has been no hearing on the merits. The parties subsequently provided written submissions and affidavit material in relation to the costs order which I should make.

- [2] For the reasons which follow, the appropriate order is that the plaintiff pays the first defendant's costs of the application from 14 March 2026 and the second defendant's costs of the application from 19 May 2026, both on the standard basis, and the costs of the application are otherwise reserved.

Background

- [3] To explain my reasons for the conclusions I have reached, some procedural background is necessary.
- [4] On 14 March 2025, the plaintiff commenced these proceedings against the defendants. The defendants subsequently filed defences: the first defendant on 9 June 2025 and the second defendant on 11 June 2025. The second defendant entered voluntary liquidation on 19 June 2025. As a consequence, the plaintiff could only proceed against the second defendant by leave of the Court under s 471B of the *Corporations Act 2001* (Cth).
- [5] On 23 July 2025, the plaintiff filed and served an amended statement of claim on both defendants. This occurred in circumstances where the plaintiff had not applied for, or obtained, leave to proceed against the second defendant following its entry into voluntary liquidation.
- [6] On 2 October 2025, the plaintiff filed an application for summary judgment against the first defendant, but not the second defendant (the **Summary Judgment Application**). The application was returnable on 7 November 2025.
- [7] On the afternoon of 6 November 2025, the first defendant provided to the plaintiff's solicitors a draft amended defence together with submissions intended to be relied upon at the hearing of the application.
- [8] The Summary Judgment Application did not proceed to a substantive hearing on 7 November 2025. Instead, orders were made that the application be adjourned to a date to be fixed, together with an order that the plaintiff pay the first defendant's costs thrown away by reason of the adjournment (the **November 2025 Orders**). It is not immediately apparent on what basis these orders were made. There is no transcript of the hearing. The clearest indication is the respective explanations provided by the plaintiff's and first defendant's solicitors. They depose, in substance, that the order was made because the judge determining the matter considered the Summary Judgment Application should not have been filed while the proceedings were stayed against the second defendant.
- [9] On 28 January 2026, the plaintiff filed an application which sought, relevantly, that the plaintiff be given leave under the *Corporations Act* to proceed against the second defendant. This application also sought summary judgment against both defendants, but only in respect of certain parts of the claim (the **January 2026 Application**). It is unclear why a further application for summary judgment was filed in respect of the first defendant in circumstances where the Summary Judgment Application had been adjourned to a date to be fixed. The January 2026 Application was returnable on 16 March 2026.
- [10] The January 2026 Application did not proceed. Instead, the plaintiff filed a further application on 6 March 2026 which sought orders that both the Summary Judgment

Application and January 2026 Application be listed for a one-day hearing on the Civil List. This application was returnable on 11 March 2026.

- [11] On 10 March 2026, orders were made by consent vacating the hearing date for the Summary Judgment Application and part of the January 2026 Application and listing the application for leave to proceed against the second defendant (the remaining part of the January 2026 Application) for hearing on 16 March 2026.
- [12] On 13 March 2026, the first defendant served an amended defence on the plaintiff. It had been filed two days earlier on 11 March 2026. It was in an identical form to the draft previously provided to the plaintiff on 6 November 2025.
- [13] On 16 March 2026, the Court granted leave to the plaintiff to proceed against the second defendant. Further orders and directions were made to facilitate the hearing of the Summary Judgment Application (**16 March Orders**). The directions contemplated an amended application (to be filed by 27 March 2026), requests for particulars (to be provided by 17 April 2026), the delivery of further defences (to be filed by 8 May 2026) and the exchange of evidence to be relied upon at the hearing of the Summary Judgment Application (the plaintiff by 12 June 2026; the defendants by 26 June 2026). The balance of the January 2026 Application, including those further parts which sought summary judgment, was dismissed with no order as to costs. The hearing of the Summary Judgment Application was to be set down on the Civil List on a date to be fixed.
- [14] In accordance with the 16 March Orders:
 - 1. The plaintiff filed, on 27 March 2026, an amended Summary Judgment Application; the nature of the amendment was to make clear that relief was also sought against the second defendant;
 - 2. A request for particulars was provided and responded to;
 - 3. The second defendant filed an amended defence on 18 May 2026, the first defendant did not—it may be inferred because he had already done so on 11 March 2026 prior to the orders being made;
 - 4. The plaintiff filed a reply to each of the amended defences on 29 June 2026; and
 - 5. The Summary Judgment Application was ultimately listed for hearing on 3 August 2026.
- [15] The exchange of evidence did not occur. The plaintiff did not file and serve any evidence. It may be inferred that the defendants did not do so because they had not been provided with evidence to respond to.
- [16] Notwithstanding the plaintiff's failure to provide evidence to be relied upon, the parties made various attempts by correspondence to resolve the application. These attempts occurred well in advance of the proposed hearing date.
- [17] On the materials, the first attempt appears to have been initiated by the second defendant's solicitors on 3 June 2026 in which it was contended that the application was inappropriate given the issues in dispute. The second defendant invited the

plaintiff to dismiss the application with no order as to costs. There is no suggestion that the plaintiff responded to this correspondence.

- [18] The next correspondence was sent by the plaintiff's solicitors on 8 July 2026. It is addressed to the first defendant's solicitors and does not, on its face, appear to have been copied to the second defendant's solicitors. By this correspondence, the plaintiff adopted the position that the matters raised in the amended defence would be more appropriately determined at trial. It invited the first defendant to consent to orders that the application be dismissed with no order as to costs.
- [19] On 10 July 2026, the first defendant's solicitors responded. This correspondence, which was copied to the second defendant's solicitors, rejected the proposal advanced by the plaintiff. Instead, it sought costs of the proposed hearing (notwithstanding it had not yet occurred and was not due to occur until 3 August 2026), together with the thrown away costs ordered on 7 November 2025, fixed in the amount of \$30,000.
- [20] Despite further exchanges of correspondence between the plaintiff and the first defendant, which are unnecessary to set out, these positions remained unaltered.
- [21] All parties were however able to agree to orders dismissing the Summary Judgment Application. This occurred on 16 July 2026. As I have said, these orders contemplated that costs were to be determined on the papers.

Some matters of principle

- [22] The costs of an application are in the discretion of the court. That discretion is not constrained by absolute rules. The discretion must be exercised judicially so that the court arrives at the "order it thinks fit in the particular circumstances of the case."¹
- [23] In the ordinary course, the guiding principle is embodied in the general rule that costs follow the event unless the Court orders otherwise.² It is usually success in the proceeding or application or on a particular issue which controls the application of the general rule. An application for summary judgment does potentially engage different considerations. The authorities recognise that such an application may fail even though the applicant may have good prospects of succeeding at trial. That may occur, for example, because a party resisting the application may rely upon evidence not ultimately accepted at trial but which, for the purposes of a summary judgment application, must be. Accordingly, the usual course is for costs to be reserved or made costs in the proceeding.³ There are exceptions. One is where an application for summary judgment is refused on the basis of granting the successful party an indulgence.⁴ Another is found in r 299 of the UCPR, which entitles the court to dismiss the application and award costs to the respondent where it appears to the Court that the applicant was or ought reasonably to have been aware that the respondent relied on a point that would entitle them to have the application dismissed.⁵

¹ *Fairfield Services Pty Ltd (in liq) v Leggett* (2020) 5 QR 50; [2020] QSC 183 at [19].

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

³ *State of Qld v Nixon* [2002] QSC 296 at [4], [6]-[7].

⁴ *National Australia Bank Limited v Bluanya Pty Ltd (No 2)* [2018] QSC 93 at [7]-[8].

⁵ UCPR r 299.

- [24] Both the general rule and the principles relevant to summary judgment assume that there has been a determination of the application on the merits. That has not occurred here. This raises additional principles, only some of which the parties have referred to.
- [25] Relevantly, there is a line of authority which generally supports the position that the court in determining costs should refrain from embarking upon a determination of the merits purely for the purposes of making a costs order. Such an approach, which invites the court to determine a hypothetical, is to be avoided.⁶ This explains why, albeit it is not inevitable, if both parties appear to have acted reasonably “in commencing and defending the proceedings and the conduct of the parties continued to be reasonable until the litigation was settled or its further prosecution became futile, the proper exercise of the cost discretion will usually mean that the court will make no order as to the cost of the proceedings.”⁷
- [26] Subsequent authorities have emphasised that in considering the question of costs in cases where there has been no hearing on the merits there is a distinction to be drawn. In *ONE.Tel Ltd v Deputy Commissioner of Taxation*⁸ the distinction was described by Burchett J in this way:⁹

“In my opinion, it is important to draw a distinction between cases in which one party, after litigating for some time, effectively surrenders to the other, and cases where some supervening event or settlement so removes or modifies the subject of the dispute that, although it could not be said that one side has simply won, no issue remains between the parties except that of costs. In the former type of case, there will commonly be lacking any basis for an exercise of the Court’s discretion otherwise than by an award of costs to the successful party. It is the latter type of case which more often creates problems, since there may be difficulty in discerning a clear reason why one party, rather than the other, should bear the costs.”

- [27] This distinction was endorsed by Bond J (as his Honour then was) in *Fairfield Services Pty Ltd (in liq) v Leggett*.¹⁰ In so doing, his Honour was, with respect correctly, conscious to observe that the principles guiding the exercise of discretion should not simply involve a classification of a case into one of the two categories identified by Burchett J and then an application of the general rule flowing from that classification: the “considerations which may influence the proper exercise of the costs discretion are not so narrowly confined.”¹¹
- [28] In *Leggett*, Bond J provided some useful elaboration and explanation of the principles. These include the proposition, contended for by the first defendant, that “surrender or capitulation will usually provide a strong reason to award costs against the party who has surrendered or capitulated.”¹² But that proposition, as Bond J made

⁶ *Molnar v Good Mood Food Pty Ltd* [2020] FCA 1242 at [18]-[19].

⁷ *Re Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin* (1997) 186 CLR 622 at 625 (McHugh J).

⁸ *ONE.TEL Ltd v Deputy Commissioner of Taxation* (2000) 101 FCR 548; [2000] FCA 270.

⁹ *Ibid* at [6].

¹⁰ (2020) 5 QR 50 at [12] and [16] (“*Leggett*”).

¹¹ *Ibid* at [16].

¹² *Ibid* at [23](a).

plain, was advanced in the context of the first category of case identified by Burchett J. As to the second category of case, his Honour recognised that “there may be difficulty in discerning a clear reason why one party, rather than the other, should bear the costs, and that might provide good reason to decide that each party should bear its own costs.”¹³

The parties’ positions and arguments on costs

- [29] The plaintiff seeks his costs of the Summary Judgment Application but only against the first defendant. It is contended this is the appropriate course because the application was properly brought but has subsequently fallen away by reason of the defendants’ conduct. Alternatively, the plaintiff seeks orders that costs be reserved.
- [30] The plaintiff’s submissions focus upon the differences between the original defences and the amended defences subsequently delivered by the defendants. The comparison is said to demonstrate, first, that the Summary Judgment Application was appropriately commenced and, secondly, that its later dismissal by consent was justified. The plaintiff contends that the costs incurred in prosecuting the application were rendered unnecessary only because the defendants materially altered their pleaded cases through the amended defences.
- [31] On that basis, the plaintiff submits that he ought not bear the cost consequences of an application which became unnecessary because the defendants had not properly pleaded their cases at the outset and, in the case of the first defendant, only provided an amended defence in draft on the eve of the original hearing date. It is submitted that this conduct was akin to the grant of an indulgence.
- [32] The first defendant contends that the plaintiff’s position in seeking his costs is contrary to the usual rule that costs are reserved in unsuccessful summary judgment applications or where an application settles.¹⁴ It is submitted that the plaintiff should pay the first defendant’s costs of the application, including on the indemnity basis after 13 March 2026.
- [33] The first defendant contends that, properly characterised, the plaintiff has, by agreeing to the application’s dismissal, capitulated. That is said to be a strong reason to award costs against the plaintiff.¹⁵ The capitulation has occurred in circumstances where the plaintiff had earlier conceded that the continuation of the application was inappropriate. That concession was not communicated until 8 July 2026, some eight months after the amended defence had first been provided in draft form and approximately four months after it had been filed and served. The amended defence put the plaintiff on notice of the factual and legal controversies. Notwithstanding these matters, the plaintiff persisted with prosecuting the hearing until 8 July 2026, albeit the plaintiff did not file and serve evidence as the 16 March Orders required.
- [34] It is also said by the first defendant that in persisting with the Summary Judgment application the plaintiff has acted unreasonably for three reasons: (i) the application

¹³ *Leggett* at [23](b), citing *Re Minister for Immigration and Ethnic Affairs; Ex parte Lai Qin* (1997) 186 CLR 622.

¹⁴ Citing *Clements v Lillas & Loel Lawyers Pty Ltd* [2023] QSC 271 at [12]-[14] and *Re Minister for Immigration and Ethnic Affairs of the Commonwealth of Australia; Ex parte Lai Qin* (1997) 186 CLR 622 at 624.

¹⁵ Citing *Leggett* at [23](a).

was originally filed in circumstances where the plaintiff knew the proceedings against the second defendant were stayed; (ii) the plaintiff pursued the summary judgment application against the first defendant without considering his amended defence until eight months after it was first provided in draft form; and (iii) the plaintiff pursued summary judgment against the second defendant knowing that it would be amending its defence. These matters are also advanced to support the submission that the plaintiff should pay costs after 13 March 2026 on the indemnity basis. The special or unusual feature of the case said to warrant these costs is that the plaintiff failed to inform the first defendant that the application would not be pursued after the amended defence was served on this date. In fact, the plaintiff continued to prosecute the matter.

- [35] The second defendant's primary submission is that the plaintiff should pay its costs. The focus of its submissions was directed to responding to the plaintiff's submissions. It is unclear why it has adopted this position in circumstances where the plaintiff does not seek costs against the second defendant. In any event, the apparent basis for its position on costs is that the application has been dismissed and the general rule that costs ought to follow the event should apply.

Consideration

- [36] In the present case, it may be accepted that the plaintiff acted reasonably in commencing the Summary Judgment Application against the first defendant. However, the reason the application did not proceed on 7 November 2025 was not the late provision of the draft amended defence. Rather, it was because leave had not been obtained to proceed against the second defendant following its entry into liquidation. The costs consequences of that adjournment have already been addressed by the November 2025 Orders, pursuant to which the plaintiff was ordered to pay the first defendant's costs thrown away by reason of the adjournment. In those circumstances, the adjournment cannot properly be characterised as the consequence of any indulgence extended to the first defendant.
- [37] Thereafter, the plaintiff elected to continue pursuing the Summary Judgment Application and was entitled to do so. Ultimately, however, the application did not proceed because amended defences were filed by both defendants, on 11 March 2026 and 18 May 2026 respectively. The delivery of those pleadings did not involve the grant of any indulgence. The defendants did not require leave to amend their defences, and the orders of 16 March 2026 expressly provided the opportunity for them to do so.
- [38] Although the plaintiff undoubtedly incurred costs in filing and initially prosecuting the application, I do not consider there is any principled basis upon which those costs should now be shifted to the defendants. Such an order would be inconsistent with the generally accepted position in relation to summary judgment applications to which I have referred. That consideration is also relevant to the defendants' contention that they should recover all of their costs of the application. In my view, neither party's primary position should be accepted.
- [39] That is not however the end of the matter. It is necessary to consider that the application did not ultimately proceed because, as the plaintiff acknowledged, the matters raised in the amended defences were more appropriately determined at trial.

It may be accepted that this conduct involves a desire to no longer persist with the application.

- [40] In my view, it is not accurate to characterise the plaintiff's conduct as a surrender or capitulation of the kind described in the first category identified by Burchett J. Such a characterisation would overlook the fact that the amended defences fundamentally altered the footing upon which the Summary Judgment Application was to be determined and were the operative reason why the plaintiff no longer considered the application appropriate to pursue.
- [41] Rather, the present case more closely resembles the second category identified by Burchett J. The filing of the amended defences was a supervening event which materially changed the circumstances in which the application fell to be determined. In such a case, the authorities recognise that it may be difficult to identify any compelling reason why one party, rather than another, should bear the costs consequences of the abandoned application.
- [42] There is, however, a material consideration which distinguishes the present case. The plaintiff did not abandon the Summary Judgment Application promptly after receiving the amended defences. The first defendant's amended defence was served on 13 March 2026 and the second defendant's amended defence on 18 May 2026. From each of these dates the plaintiff was, or ought to have been, reasonably aware that his application was unlikely to succeed in respect of each defendant. Yet the plaintiff did not communicate any intention to discontinue the application until 8 July 2026. No satisfactory explanation has been offered for that delay. This is particularly so given that, on 3 June 2026, the second defendant expressly invited the plaintiff to consent to the dismissal of the application and received no substantive response. In those circumstances, while it would not be appropriate that the plaintiff bear all of the defendants' costs of the application, it is appropriate that each defendant recover their costs from the day after their amended defence was filed and served. The costs incurred prior to those dates should be reserved.
- [43] The first defendant seeks his costs on the indemnity basis on and from the date his amended defence was served, 13 March 2026. The reason why has been outlined above. The plaintiff took a considerable time to form the view that the application was no longer appropriate. Instead of reflecting on the amended defence, the plaintiff actively pursued taking steps to prosecute the matter. These are said to include, filing the 6 March 2026 application and obtaining the 16 March 2026 Orders and, in some measure at least, proceeding in accordance with those orders. These matters are said to have caused prolonged delay and wasted costs. It must however be accepted that some of these steps, specifically the filing of the 6 March 2026 application, were taken before the first defendant's amended defence was filed. Other matters, including the making of the 16 March 2026 orders, occurred very shortly after the amended defence had been filed. While the plaintiff had been in possession of a draft amended defence since November 2025, it was reasonable not to have abandoned the Summary Judgment Application until after the final amended defence had been formally filed and served. The circumstances raised by the first defendant do not constitute the kind of special or unusual feature which would justify a departure from the ordinary basis upon which costs are awarded.

Fixed costs order

- [44] The remaining matter arising is the orders sought by the first defendant that the costs order, and, separately, the 7 November costs order, be fixed. The plaintiff has not addressed the matter in his reply submissions.
- [45] The purpose of making a fixed costs or gross sum order is to save the parties the time, trouble, delay and expense and aggravation in protracted litigation arising out of taxation.¹⁶ The relevant power is not confined only to complex cases but may be used whenever the circumstances warrant its exercise.¹⁷ The power should however only be exercised when the Court considers that it can do so fairly between the parties, including on sufficient evidence in arriving at an appropriate sum on the materials available.¹⁸
- [46] The first defendant raises two matters which are said to support an inference that the assessment of costs would be protracted and expensive. Those matters only concern the 7 November costs order. Taken at their highest, they suggest there is some possibility of dispute on assessment over which costs were “thrown away” by the November adjournment. That possibility does not provide a sufficient basis upon which to infer that an assessment of the costs awarded by the 7 November costs order would be protracted and expensive. No reason was given as to why an assessment of the costs determined in this judgment would be protracted and expensive.
- [47] There are further issues with the first defendant’s submissions. In seeking this order, the first defendant relies upon the very detailed affidavit of his instructing solicitor. That affidavit deals with the 7 November costs order. However, its difficulty is that it does not contemplate a scenario reflecting what in my view is the proper order for the balance of the application. That determination with respect to the first defendant is, as I have indicated, that the plaintiff pay the first defendant’s costs of the application on the standard basis from 14 March 2026 and that costs otherwise be reserved. Within the affidavit appears a table which sets out the estimates. The table however, so far as it deals with standard costs from 14 March 2026, does not correspond to any paragraph within the affidavit swearing to, or explaining, the methodology.
- [48] It is also relevant that both the costs determination I have made and the 7 November costs order are on the standard basis, which affords the Court less latitude in assessing the reasonableness of costs than when costs are fixed on an indemnity basis.¹⁹ Beyond the evidence of the instructing solicitor, there is no independent material supporting the reasonableness of the amounts claimed. Nor am I satisfied on the face of the material that each item in the first defendant’s estimate is reasonable. Over a third of the total amount said to be recoverable on the standard basis is for professional fees and outlays incurred not in the substantive application, but rather in “establishing and obtaining a determination of the first defendant’s costs entitlement”. No submission was advanced as to why those costs, which form a significant component of the total

¹⁶ *Australian Securities and Investments Commission v Atlantic 3 Financial (Aust) Pty Ltd (No 3)* [2008] 2 Qd R 298; [2008] QSC 9 at [32](a) (citing *Leary v Leary* [1987] 1 WLR 72 and *Beach Petroleum NL v Johnson (No 2)* (1995) 57 FCR 119).

¹⁷ *Harrison v Schipp* (2002) 54 NSWLR 738 at [21].

¹⁸ *Australian Securities and Investments Commission v Atlantic 3-Financial (Aust) Pty Ltd (No 3)* [2008] 2 Qd R 298; [2008] QSC 9 at [32](c).

¹⁹ *Ibid* at [39].

amount claimed, should be recoverable. I am not satisfied that these costs are reasonable, especially given the first defendant has not established that an assessment of costs would itself be expensive.

- [49] In these circumstances, there is not sufficient evidence upon which I can make a fixed costs order in a manner fairly between the parties.²⁰ Those costs will need to be assessed.

Order

- [50] In the circumstances, I order that:

1. The plaintiff is to pay the first defendant's costs of the application from 14 March 2026 on the standard basis, to be assessed if not agreed.
2. The plaintiff is to pay the second defendant's costs of the application from 19 May 2026 on the standard basis, to be assessed if not agreed.
3. The costs of the application are otherwise reserved.

- [51] I will invite the parties to provide a draft order.

²⁰ [2008] 2 Qd R 298 at [32](c).