SUPREME COURT OF QUEENSLAND

CITATION:	*Sun Investments (No.1) Pty Ltd v Graham* [2026] QSC 208
PARTIES:	**SUN INVESTMENTS (NO. 1) PTY LTD** **ACN 169 631 823** (plaintiff/respondent) **v** **KEVIN GRAHAM** (defendant/applicant)
FILE NO/S:	BS 15548/23
DIVISION:	Trial
PROCEEDING:	Claim (Application)
ORIGINATING COURT:	Supreme Court
DELIVERED ON:	11 September 2026
DELIVERED AT:	Brisbane
HEARING DATE:	20 August 2026 (with written submissions on costs received on 28 August 2026 and 3 September 2026)
JUDGE:	Freeburn J
ORDER:	**The plaintiff pay the defendant's costs of the proceeding (including reserved costs) on the standard basis.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the plaintiff filed an application for leave to file a fifth further amended statement of claim – where the plaintiff was unable to properly plead its professional negligence claim – where the plaintiff's application and the whole proceeding was dismissed – where the proceeding not determined on the merits – where the defendant seeks its costs of the proceeding on the standard basis until the date of three (alternative) Calderbank offers and its costs on an indemnity basis thereafter – where the plaintiff submits that its rejection of those offers was not unreasonable – whether the plaintiff's rejection of the Calderbank offers was unreasonable in the circumstances to warrant indemnity costs *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No 2)* (2005) 13 VR 435; [2005] VSCA 298, applied *J & D Rigging Pty Ltd v Agripower Australia Limited* [2014] QCA 23, cited

Novelly v Tamqia Pty Ltd (No 2)[2024] NSWCA 209, cited
Sun Investments (No.1) Pty Ltd v Graham [2026] QSC 98, cited

COUNSEL: B Hamilton
(Solicitor for the plaintiff/respondent)
A Nicholas
(Counsel for the defendant/applicant)

SOLICITORS: Stone Group Lawyers (plaintiff/respondent)
Hall & Wilcox (defendant/applicant)

[1] On 20 May 2026, I found that the fifth version of the plaintiff's statement of claim needed to be completely and properly redrafted.[1] I gave leave to re-plead. The specific orders made were that:

(a) on or before 20 July 2026, that is some 60 days later, the plaintiff shall bring an application (in the Applications List) for leave to file and serve a fresh statement of claim; and

(b) unless the plaintiff obtains leave in accordance with that order, the plaintiff not be permitted to proceed with the claim.

[2] The plaintiff filed an application for leave to amend on 20 July 2026 — the last day of the 60 day period. Ultimately, on 20 August 2026, I heard and dismissed an application by the plaintiff to further amend the statement of claim. I also dismissed the proceeding.

The Competing Position as to Costs

[3] The defendant, as the successful party, seeks its costs of the proceeding on the standard basis until the relevant Calderbank offer and its costs on an indemnity basis thereafter.

[4] The plaintiff makes the following submissions:

(a) any costs order should not displace the costs orders made by consent in respect of the applications filed on 11 August 2025 and 4 February 2026 (as amended by the order on 23 February 2026) because those consent orders were agreed as costs on the standard basis; and

(b) the critical question is whether the non-acceptance of the offers was unreasonable in the circumstances, and on that issue the defendant has not shown that the plaintiff acted unreasonably or imprudently in not accepting the relevant Calderbank offer.

[5] I accept both submissions by the plaintiff.

[6] As to the first submission, the parties are bound by the consent orders already made.

[7] As to the second submission, it is necessary to descend into some detail.

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1 The reasons are published as: *Sun Investments (No.1) Pty Ltd v Graham* [2026] QSC 98 (**Reasons**).

The Calderbank Offers

[8] The defendant is not claimed to have made any offers under Part 5, Chapter 9 of the *Uniform Civil Procedure Rules 1999* (Qld) (**the rules**). Instead, the defendant made three Calderbank offers. The details of the offers are as follows:

Offer number	Date of Offer	Open until	Amount of offer
1	8 April 2024	15 April 2024 (7 days)	$537,000 'all up'
2	21 May 2024	4 June 2024 (14 days)	$527,500 'all up'
3	11 August 2026	19 August 2026 (8 days)	Defendant to bear its own costs

[9] All three offers were not accepted and foreshadowed an application for indemnity costs if the offer was rejected and was not beaten at trial. Of course, the case did not progress that far. The proceeding was dismissed because the plaintiff was unable to properly plead its case. There was no hearing of the case on the merits.

[10] In those circumstances, the comparison of the offers as against the result is not straight-forward. The difficulties with the plaintiff's case here, for example, may have more to do with the way in which the defendant solicitors documented their retainer.

The Principles

[11] There is no presumption that the party rejecting a Calderbank offer should pay the offeror's costs on an indemnity basis if the offeree received a less favourable result; the correct approach is to treat the rejection of a Calderbank offer as a matter to which the court should have regard when considering whether to order indemnity costs.[2]

[12] And so, in *Novelly v Tamqia Pty Ltd (No 2)* Gleeson and Kirk JJA stated:[3]

> A Calderbank offer does not automatically result in the Court making a special costs order. The relevant question is whether the offeree's failure to accept the offer, in all the circumstances, warrants departure from the ordinary rule as to costs. That the offeree ends up worse off than if the offer had been accepted does not of itself warrant departure from the ordinary rule as to costs…[4]

[13] The critical question is whether the rejection of the offer was unreasonable in the circumstances.[5] The party seeking costs on an indemnity basis must show that the party acted "*unreasonably or imprudently*" in not accepting the Calderbank offer.[6]

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2 *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No 2*) (2005) 13 VR 435; [2005] VSCA 298 at [18]-[20].

3 [2024] NSWCA 209 at [16].

4 Their Honours cited *SMEC Testing Services Pty Ltd v Campbelltown City Council* [2000] NSWCA 323 at [37]; *Jones v Bradley (No 2)* [2003] NSWCA 258 at [8]–[9]; *Miwa Pty Ltd v Siantan Properties Pte Ltd (No 2)* [2011] NSWCA 344 at [8].

5 *J & D Rigging Pty Ltd v Agripower Australia Limited* [2014] QCA 23 at [5] citing *Hazeldene's Chicken Farm* (supra) at [23].

[14] Thus, in *Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No 2)*, the Victorian Court of Appeal stated that a court considering a submission that the rejection of a Calderbank offer was unreasonable should ordinarily have regard to at least the following matters:

(a) the stage of the proceeding at which the offer was received;

(b) the time allowed to the offeree to consider the offer;

(c) the extent of the compromise offered;

(d) the offeree's prospects of success, assessed as at the date of the offer;

(e) the clarity with which the terms of the offer were expressed; and

(f) whether the offer foreshadowed an application for an indemnity costs in the event of the offeree's rejecting it.[7]

Application of the Principles

[15] Here, it can be accepted that the offers were clear, allowed sufficient time for acceptance, warned of the prospect of indemnity costs, and offered at least some degree of compromise. However, the case was not one that was decided on the merits. Despite a number of attempts, the plaintiff was unable to properly plead its case in professional negligence against the defendant solicitors.

[16] To take a prominent example, the plaintiff was unable to competently plead the retainer. Now the difficulty may have been because the retainer was itself vague, or it may be because there was some difficulty in the plaintiff's instructions to its present solicitors, or it may be for reasons related to the expertise of the plaintiff's present legal team, or it may be for a combination of reasons. To the extent that the retainer was vague, that may well be because the solicitors failed to properly record the terms of their retainer.

[17] This is a case that failed at the pleading stage; there was no hearing of the merits.

[18] Certainly, this is not one of those cases which was always doomed to fail.

[19] Ultimately, in the circumstances of this case I am unable to conclude that the rejection of the three offers was unreasonable in the circumstances.

[20] The defendant should have his costs on the standard basis.

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6 *J & D Rigging* (supra) at [5] citing *McBride v ASK Funding Ltd* [2013] QCA 130 at [65].

7 *Hazeldene's Chicken Farm* (supra) at [25], a passage quoted with approval by the Queensland Court of Appeal in *J & D Rigging* (supra) at [6].