SUPREME COURT OF QUEENSLAND

CITATION:	*LCM Operations Pty Ltd v R Kelly & Ors (No 2)* [2026] QSC 261
PARTIES:	**LCM OPERATIONS PTY LTD (ACN 616 451 033)** (plaintiff) **v** **R KELLY & ORS t/as CLYDE 7 CO AUSTRALIA (ABN 72 157 316 912** (defendant)
FILE NO/S:	3804/25
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	30 October 2026
DELIVERED AT:	Brisbane
HEARING DATE:	On the papers. Plaintiff's submissions dated 21 September 2026. Defendant's submissions dated 23 September 2026
JUDGE:	Smith J
ORDER:	**I order the plaintiff pay 50 per cent of the defendant's costs of and incidental to the application on the standard basis.**
CATCHWORDS:	CIVIL PROCEDURE – COSTS – where a costs assessor referred three questions to the court concerning an assessment of costs – where the defendant succeeded on all issues – where the defendant made arithmetical errors in its costs disclosure – where the evidence suggests there may not have been full disclosure as to increase in costs *Legal Profession Act 1997* (Qld) s 316 *Uniform Civil Procedure Rules 1999* (Qld) r 681, r 717, r 732, r 743G *LCM Operations Pty Ltd v R Kelly & Ors* [2026] QSC 214, cited *Tulloch Brae Pty Ltd v Environmental Protection Equipment Pty Ltd* [2025] QSC 292, cited
SOLICITORS:	Law in Check for the plaintiff Moray & Agnew for the defendant

Introduction

[1] This is the costs decision consequent on the decision given in *LCM Operations Pty Ltd v R Kelly & Ors*.[1]

Submissions

[2] The plaintiff submits that the costs of and incidental to the determination by the court should be ordered to be costs in the assessment or alternatively there should be no order as to costs. It is submitted that the order for the allocation of costs as between the parties is premature where the assessment will be the relevant event for the purpose of the costs adjudication. The determination of the questions under r 717(2) of the UCPR was not the conclusion of a claim or application brought by other party. The costs assessor could have elected to determine the questions without reference to the court. For example, the costs assessor could have had regard to the provisions of s 316 of the *Legal Profession Act 1997* (Qld) in conducting the assessment.

[3] The outcome of the assessment may be a sum that is considerably reduced by reason of the determination and the defendant's costs disclosure failures. Therefore, until the outcome of the assessment is known costs, cannot be assessed. The cost assessor must decide the costs of a costs assessment under r 732. This could include the costs associated with the determination. There is a risk of a double application as to costs.

[4] Alternatively, if costs are to be adjudicated there ought be no order as to the costs against either party. The parties did not initiate the determination or commence any application in relation to it. The parties' submissions were made in an effort to assist the court in making the determination. Also, the courts discretion should be exercised to not order costs against the plaintiff. The plaintiff should not be regarded as unsuccessful as it did not bring the application or seek relief. The plaintiff submissions were genuine. There was some evidence of a failure by the defendant to disclose significant increases in costs. The determination was of real and practical importance. The relevance of the questions had their root in the defendant's own conduct including a defective table in the costs disclosure; the failure to make timely ongoing disclosure and the escalation of the fees ultimately billed at $20,384,890.34 roughly double the highest disclosed estimate and well in excess of the revised cap

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1 [2026] QSC 214.

fee of $9,775,800. The defendant's costs agreements contained arithmetical errors. The plaintiff should not be punished in such a situation.

[5] The defendant submits it was successful in relation to all three issues and submits that costs should follow the event and should be awarded in its favour. It is submitted that the affidavit of Ms Prasad affirmed 19 August 2025 raised issues about a failure of ongoing disclosure and issues concerning whether the agreement was void because of the uplift fee. On 10 November 2025, the costs assessor wrote to the plaintiff's solicitor referring to Ms Prasad's affidavit and noting that the plaintiff had to make a decision as to whether or not to make an application, as the outcome of such an application would have a significant bearing on the outcome as to costs. Further on 18 November 2025, the costs assessor wrote to the plaintiff's solicitor noting that if the plaintiff continued to contend that the retainer agreements were void, this had to be confirmed. If there was no such confirmation, he would continue the assessment on the basis the plaintiff no longer held that view. On 19 November 2025, the plaintiff confirmed by email from Ms Prasad to the assessor that it did contend the agreements were void and that costs should be assessed on the Supreme Court of Queensland scale.

[6] On 25 November 2025, the defendant indicated it considered this issue to be of sufficient importance for the matter to be decided by the Supreme Court under r 743G.

[7] On 26 November 2025, the costs assessor directed the plaintiff to provide submissions concerning the purported invalidity of the retainer agreement. Submissions were exchanged.

[8] On 11 March 2025, the costs assessor wrote to the plaintiff's solicitor noting, "as I am considering seeking the assistance of the court, inter alia, in determining whether your approach is correct, I direct the plaintiff to provide the defendant and myself with a sworn affidavit encompassing the issues raised in your submissions…"

[9] At no stage did the plaintiff indicate that the validity of the agreement was not pressed. The fact is the plaintiff made submissions in respect of all three issues referred by the costs assessor. Further, on the day of the hearing, the plaintiff served further submissions of 15 pages, which continued to assert the invalidity of the costs agreement and dealt with the other two issues.

[10] It is submitted the principal issue for referrals was initiated by the plaintiff and pursued vigorously until the hearing. Issues 2 and 3 were also taken up but both were conceded.

[11] In the circumstances costs should follow the event. Rule 681 of the UCPR applies. *Tulloch Brae Pty Ltd v Environmental Protection Equipment Pty Ltd*[2] is an example of where the court awarded costs against a party in favour of a party in such an application.

Discussion

[12] The ordinary rule is that costs follow the event, but they remain in the discretion of the court.[3] The court under UCPR r 687 may order a party to pay a specified percentage of costs.

[13] In this particular case, the plaintiff did agitate as to the validity of the costs agreement. It lost that argument. Having said that, there were arithmetical errors in the costs agreement which led to the argument.

[14] Ultimately, the defendant was successful on all three issues. The plaintiff filed extensive submissions on issue 1, but effectively conceded issues 2 and 3 on the date of the hearing. It remains a live issue as to whether there was full and adequate disclosure with respect to the level of costs.

[15] Ultimately, I have concluded that in all of the circumstances, bearing in mind the defendant's success and the plaintiff's agitation of the issues, but taking into account the arithmetical errors in the costs agreement and the live argument concerning the issue of costs disclosures that the plaintiff should pay 50 per cent of the defendant's cost of and incidental to the application on the standard basis.

[16] It is not appropriate to leave the matter to be decided by the costs assessor or there to be no order as to costs.

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2 [2025] QSC 292.
3 UCPR 681.

Order

1. I order the plaintiff pay 50 per cent of the defendant's costs of and incidental to the application on the standard basis.