

FEDERAL COURT OF AUSTRALIA

Director of the Fair Work Building Industry Inspectorate v Abbott [2016] FCA

379

File number: WAD 230 of 2008

Judge: **GILMOUR J**

Date of judgment: 19 April 2016

Catchwords: No catchwords

Legislation: *Building and Construction Industry Improvement Act 2005* (Cth)
Fair Work Act 2009 (Cth) s 570
Federal Court of Australia Act 1976 (Cth) s 43
Workplace Relations Act ss 494, 824

Cases cited: *Australian Building & Construction Commissioner v Abbott (No 4)* [2011] FCA 950
CFMEU v Director of the Fair Work Building Industry Inspectorate (No 2) [2013] FCAFC 25

Date of hearing: 16 February 2016

Registry: Western Australia

Division: General Division

Number of paragraphs: 10

Counsel for the Applicant: Ms M Coulson

Solicitor for the Applicant: Clayton Utz

Counsel for the Respondent: Mr R Bower

Solicitor for the Respondent: Corser & Corser Lawyers

ORDERS

WAD 230 of 2008

BETWEEN: **DIRECTOR OF THE FAIR WORK BUILDING INDUSTRY
INSPECTORATE**
Applicant

AND: **BENJAMIN ABBOTT & ORS**
Respondent

JUDGE: **GILMOUR J**

DATE OF ORDER: **19 APRIL 2016**

THE COURT ORDERS THAT:

1. The 221st respondent pay the applicant's costs, including any reserved costs, of the interlocutory application dated 6 June 2014.
2. The 221st respondent pay the applicant's costs of this application for costs made pursuant to liberty to apply given on 31 August 2015.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GILMOUR J:

1 The Applicant seeks orders that Mr Windus, the 221st Respondent, pay its costs of and
incidental to its interlocutory application dated 6 June 2014 (“interlocutory application”),
including reserved costs, to be taxed if not agreed.

Background

2 Mr Windus filed a Bill of Costs on 16 January 2013 ("the Bill"), claiming costs totalling
\$174,857.22 as the beneficiary of a costs order made in *Australian Building & Construction
Commissioner v Abbott (No 4)* [2011] FCA 950 ("the Liability Decision").

3 Thereafter, the Applicant, by the interlocutory application, sought a permanent stay of
assessment of the Bill on the basis that Mr Windus was not liable for the costs of the
solicitors who had represented him. The application was successful (*Director of the Fair
Work Building Inspectorate v Abbott (No 7)* [2015] FCA 969) and the parties were granted
liberty to apply as to the question of costs. The present application for costs is made by the
Applicant pursuant to that liberty.

Legal Principles

4 Section 43(1) of the *Federal Court of Australia Act 1976* (Cth) (“FCAA”) relevantly provides
that:

"Subject to subsection (1A) and section 570 of the Fair Work Act 2009, the Court or
a Judge has jurisdiction to award costs in all proceedings before the Court (including
proceedings dismissed for want of jurisdiction) other than proceedings in respect of
which this or any other Act provides that costs shall not be awarded".

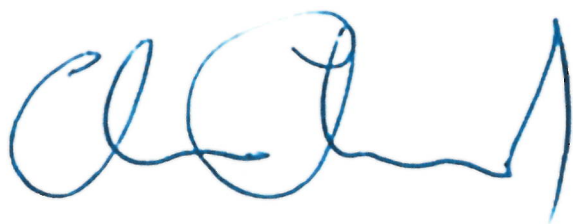
5 Section 43(2) of the FCAA provides the Court or a Judge with a broad discretion to award
costs.

6 This discretion extends to all proceedings apart from those which are brought under section
570 of the *Fair Work Act 2009* (Cth) (“FW Act”) or any other Act of Parliament that confers
a 'no costs jurisdiction' restriction.

7 Section 824 of the *Workplace Relations Act 1996* (Cth) (“WR Act”) imposes a ‘no costs
jurisdiction’ restriction. Mr Windus submits that as the original substantive proceedings
concerned matters arising under this Act that s 824 is thereby invoked.

- 8 Two things may be observed in rejecting this submission. First, the original proceedings were commenced under the *Building and Construction Industry Improvement Act 2005* (Cth) ("the BCII Act") and the WR Act. Prior to the trial in the Liability Decision, the claim against Mr Windus, pursuant to s 494 of the WR Act was withdrawn, leaving only the BCII Act claim. The BCII Act contains "no provisions that costs should not be awarded, either at all or subject to restrictions": *CFMEU v Director of the Fair Work Building Industry Inspectorate (as successor to the Australian Building and Construction Commissions (No 2))* [2013] FCAFC 25 at [9].
- 9 Second, the interlocutory application did not concern either of those Acts. Rather it was concerned with whether Mr Windus had any liability to pay the costs of the solicitors who represented him in the proceedings, the subject of the Liability Decision, and whether the assessment of the Bill should be stayed. Accordingly s 824 is not engaged.
- 10 Costs should follow the event. There will be orders that Mr Windus pay the applicants costs of the interlocutory application as well as the costs of the present application, pursuant to the grant of liberty to apply for those costs.

I certify that the preceding ten (10) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gilmour.



Associate:

Dated: 19 April 2016