

Orders for costs under rule 361(1) of the uniform civil procedure rules

Cameron v Nominal Defendant (2000) QCA137

On 18 April, 2000 the Court of Appeal consisting of Her Honour President McMurdo and their Honours Justices Davies and Moynihan handed down their decision in the matter of *Cameron v Nominal Defendant*.

That matter had proceeded to trial in the District Court and the Plaintiff was awarded judgment on 14 December, 1999 in the sum of \$28,919.00.

During the course of the proceeding the Defendant made the following formal offers:

27 November, 1997 - \$22,569.40 plus costs

17 July, 1998 - \$30,000.00 plus costs.

The Defendant argued that as the judgment did not exceed the offer of \$30,000.00 it should have its costs from the date of the offer.

Rule 361(1) of the Uniform Civil Procedure Rules states:

"This rule applies if:

- a) the Defendant makes an offer to settle that is not accepted by the Plaintiff and the Plaintiff obtains a judgment that is not more favourable to the Plaintiff than the offer to settle; and*
- b) the Court is satisfied that the Defendant was at all material times willing and able to carry out what was proposed in the offer."*

Rule 361(2) states that if those requirements are met then the Court must order the Defendant to pay the Plaintiff's costs on a standard basis up to and including the day of service of the offer to settle and order that the Plaintiff

pay the Defendant's costs on a standard basis after the day of service of the offer to settle.

However, Rule 361(4) states:

"If the Defendant makes more than one offer satisfying sub-rule (1) the first of the offers made is taken to be the only offer for this rule."

The Primary Judge determined, as most if not all practitioners had thought, that Rule 361(4) required that one should only have regard to the first offer made on 27 November, 1997 and as that offer was less than the judgment the

usual order as to costs would apply in that the Defendant would pay the Plaintiff's costs of and incidental to the action to be assessed.

The Court of Appeal disagreed with the Primary Judge and followed the Defendant's argument that the "offer satisfying sub-rule (1)" was the second offer dated 17 July, 1998 as, pursuant to Rule 361(4) it was "the first of the offers made" that was not accepted by the Plaintiff and which the Plaintiff did not beat at trial.

Accordingly, pursuant to this decision it appears that Rule 361 simply reflects, but in different wording, Part 9 of the old District Court Rules in that the Defendant can make as many offers as it desires and the "first of the offers" considered to be made by the Defendant will be the offer that the Plaintiff does not beat.

Hence all offers to settle made by the Defendant must be considered when advising the client as to costs consequences if the offer is not beaten at trial. **PL**

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