
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : STEVEN PUGH INVESTMENTS PTY LTD -v-
MOSENSONS PTY LTD [2020] WASC 225

CORAM : MASTER SANDERSON

HEARD : ON THE PAPERS

DELIVERED : 18 JUNE 2020

PUBLISHED : 18 JUNE 2020

FILE NO/S : CIV 1701 of 2019

BETWEEN : STEVEN PUGH INVESTMENTS PTY LTD
Plaintiff

AND

MOSSENSONS PTY LTD
Defendant

Catchwords:

Security for costs - Primary application to set aside costs agreement between law practice and client - Turns on own facts

Legislation:

Corporations Act 2001 (WA)
Legal Profession Act 2008 (WA)

Result:

Application dismissed

Category: B

Representation:

Counsel:

Plaintiff : No appearance

Defendant : No appearance

Solicitors:

Plaintiff : Vogt Graham Lawyers

Defendant : Mossensons

Case(s) referred to in decision(s):

Westonia Earthmoving Pty Ltd v Cliffs Asia Pacific Iron Ore Pty Ltd [2013]
WASC 57

MASTER SANDERSON:

1 This is the defendant's application for security for costs. It is brought in most unusual circumstances. The plaintiff's application is brought under s 288 of the *Legal Profession Act 2008* (WA). The plaintiff seeks to set aside a costs agreement. As an alternative, the plaintiff seeks an order there is no costs agreement in place. The plaintiff accepts that the defendant has established if a costs order were made against it in the proceedings, it would not be able to meet those costs. In other words, the threshold question under s 1335 of the *Corporations Act 2001* (Cth) is satisfied. The real question for determination is whether in these circumstances an order for security ought be made.

2 There was no dispute between the parties as to the applicable principles. These were set out by Edelman J in *Westonia Earthmoving Pty Ltd v Cliffs Asia Pacific Iron Ore Pty Ltd* [2013] WASC 57 [5], [6]. Of course, that case concerned a commercial transaction between two trading enterprises. This application seeks orders which go to the regulation of the legal profession. In that sense, it is a very different application to what is normally encountered.

3 One of the factors referred to by Edelman J in exercising discretion is the public interest. In my view, there can be no doubt that when a party seeks to set aside a costs agreement with a solicitor, it is in the public interest that application ought be heard. Section 288 is found in pt 10 div 6 of the *Legal Profession Act*. Section 251 which appears in div 1 of pt 10 of the Act reads as follows:

The purposes of this Part are as follows -

- (a) to provide for law practices to make disclosures to clients regarding legal costs;
- (b) to regulate the making of costs agreements in respect of legal services, including conditional costs agreements;
- (c) to regulate the billing of costs for legal services;
- (d) to provide a mechanism for the assessment of legal costs and the setting aside of certain costs agreements.

4 Section 260 of the Act details what disclosures of costs must be made to clients. Section 262 dictates how and when disclosure must be made. Both these sections impose statutory obligations on a law

practice. If these sections are not complied with, then under s 268(3) a client may apply under s 288 of the Act for the costs agreement to be set aside. So at the heart of any application under s 288 is the requirement the law practice meet the statutory obligations of disclosure. To make an order shutting out a client from attempting to establish a failure to comply with statutory obligations runs counter to public policy and clearly cannot be allowed to happen.

- 5 The defendant's application for security for costs will be dismissed. The costs of the application should be costs in the cause.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

CB
Associate to Master Sanderson

18 JUNE 2020