

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Blank Canvas Solutions Pty Ltd t/as Axiom Access v OzRig Pty Ltd* [2019] QCAT 84

PARTIES: **BLANK CANVAS SOLUTIONS PTY LTD**
t/as AXIOM ACCESS
(applicant)
v
OZRIG PTY LTD
(respondent)

APPLICATION NO/S: BDL172-17

MATTER TYPE: Building matters

DELIVERED ON: 1 April 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Dr Collier, Member

ORDERS: **Each party pays its own costs.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – where there is a
building dispute – where there is an issue involving costs
– where Tribunal has broad and general discretion to award
costs – where general rule that successful party entitled to
costs – where both parties successful

Queensland Building and Construction Commission Act
1991 (Qld), s 77(3)(h)
Queensland Civil and Administrative Tribunal Act 2009
(Qld), s 32, s 100, s 102(1)

*Blank Canvas Solutions Pty Ltd t/as Axiom Access v OzRig
Pty Ltd* [2018] QCAT 427
LPD Holdings (Aust) Pty Ltd v Phillips, Hickey and Toigo
[2013] QCA 305
*Rainbow Builders Pty Ltd v The State of Queensland
through the Department of Housing and Public Works (No.
2)* [2016] QCAT 497

REPRESENTATION:

Applicant: Not represented

Respondent: Self-represented

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT ACT').

REASONS FOR DECISION

What is this Application about?

- [1] In its decision dated 12 December 2018 the Tribunal ordered Blank Canvas Solutions Pty Ltd ('Axiom') to pay OzRig Pty Ltd ('OzRig') the sum of \$36,165.25, and OzRig to pay Axiom the amount of \$22,643.63.¹
- [2] In this earlier decision the Tribunal invited submissions from both parties as to costs by 31 January 2019. A submission was filed on 30 January 2019 by OzRig Pty Ltd. No submission was received from Blank Canvas Solutions Pty Ltd.
- [3] The sole remaining issue for decision is whether costs should be awarded.

Should either party pay the other party's costs?

- [4] While the Tribunal will generally not order costs in a matter², this proposition can be displaced when an enabling Act provides that costs may be awarded.³ In this case, the Tribunal may award costs when deciding a building dispute.⁴ The discretion to award costs must be exercised judicially and in accordance with the established principles.
- [5] In building matters a successful litigant is, generally speaking, entitled to an order of costs, and to deprive a successful party of its costs is an exceptional measure.⁵
- [6] In the primary decision here, the Applicant, Axiom, was awarded the amount it sought. Similarly, OzRig was awarded an amount essentially the same as that which it sought. The reason for this outcome was that each party had a legitimate claim to the amounts sought.
- [7] The Respondent, OzRig, now bases its claim for costs, which have not been particularised, as relying on its assertion that:⁶

The rectification costs were well known to the applicant well in advance of the hearing, giving the applicant the opportunity to openly discuss a compromise over the rectification costs with the respondent.

- [8] However, one party being aware of the amount of the claim by the other party, and having the possibility of reaching a compromise, is not sufficient, by itself, to give rise to a legitimate claim for costs.

¹ *Blank Canvas Solutions Pty Ltd t/as Axiom Access v OzRig Pty Ltd* [2018] QCAT 427.

² QCAT Act, s 100.

³ QCAT Act, s 102(1).

⁴ *Queensland Building and Construction Commission Act 1991* (Qld), s 77(3)(h).

⁵ *Rainbow Builders Pty Ltd v The State of Queensland through the Department of Housing and Public Works (No. 2)* [2016] QCAT 497.

⁶ OzRig Written Submissions in Relation to Costs dated 30 January 2019, par 4.

- [9] From the perspective of the Applicant, Axiom, the amount Axiom claimed from OzRig was an unpaid liquidated sum, based on an agreed amount calculated in accordance with the terms of its contract with OzRig. In other words, Axiom could assert essentially the same justification for the recovery of its costs as OzRig has.
- [10] There is no reason in this case to prefer one party's claim for costs over the other.
- [11] OzRig also makes a claim for indemnity costs to be awarded to it.⁷ The award of indemnity costs requires some special or unusual feature of the particular case.⁸ There are no such special or unusual features of this case that justify indemnity costs, even if costs were allowed.

Decision

- [12] There is no reason to award costs to either party.
- [13] The appropriate order in this case is that each party is to pay its own costs.

⁷ OzRig Written Submissions in Relation to Costs dated 30 January 2019, par 6

⁸ *LPD Holdings (Aust) Pty Ltd v Phillips, Hickey and Toigo* [2013] QCA 305