

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CIVIL

CITATION : POURZAND -v- TELSTRA CORPORATION LTD
[2012] WASC 210 (S3)

CORAM : EDELMAN J

HEARD : ON THE PAPERS

DELIVERED : 24 SEPTEMBER 2012

FILE NO/S : CIV 1714 of 2010

BETWEEN : HOSSEAN POURZAND
JENNY MARIA POURZAND
Plaintiffs

AND

TELSTRA CORPORATION LTD
Defendant

Catchwords:

Nil

Legislation:

*Legal Practitioners (Supreme Court) (Contentious Business) Determination
2010 (WA), item 3(b)*

Result:

Orders made

Category: B

Representation:

Counsel:

Plaintiffs	:	No appearance (heard on the papers)
Defendant	:	No appearance (heard on the papers)

Solicitors:

Plaintiffs	:	Lewis Blyth & Hooper
Defendant	:	Lavan Legal

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

Pourzand v Telstra Corporation Ltd [2012] WASC 210 (S2)

1 **EDELMAN J:** This is the third supplementary judgment in this matter. Following delivery of my reasons in relation to special costs orders (which themselves followed my reasons in relation to indemnity costs orders), I invited the parties to agree a minute of orders uplifting the Scale in the terms I had set out in my reasons and in relation to the costs of the special costs application. No agreement was reached and further submissions were filed concerning these matters and the costs of the special costs application which was only successful in part.

2 In relation to item 3(b) of the Scale, I explained in my reasons (*Pourzand v Telstra Corporation Ltd* [2012] WASC 210 (S2) [6]) that the appropriate order should be that the Pourzands pay Telstra's costs without reference to the limit of hours in item 3(b) of the Scale. I also explained in my reasons that I had dealt with the issue of the allowance for senior counsel's involvement in drawing the defence in the context of my consideration of item 3(b). Telstra should be entitled to its costs for the drawing of the defence, although the drawing of that defence was conducted by senior counsel, rather than a 'senior practitioner' under the scale of costs. It is plain from my reasons that I considered that the costs of a senior counsel were recoverable, although I was not prepared to lift the senior practitioner *rate* in item 3(b) of the Scale. Telstra is entitled to recover the reasonable cost under item 3(b), limited by the rate in item 3(b), although the defence is prepared by a senior counsel rather than a senior practitioner.

3 The appropriate order which will remove any doubt that the limit of hours is removed and that costs be recovered for work, limited by the Scale *rate* is as follows:

1. The plaintiffs pay the defendant's costs of the Action without reference to the limits provided for at item 3(b) (defence) of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010* (WA).

4 There remains the issue of costs of the special costs application.

5 The Pourzands say that Telstra's special costs orders application was almost entirely unsuccessful. The only success which Telstra enjoyed was in relation to uplifting 10-hour limit in item 3(b) of the Scale. The Pourzands seek 90% of their costs of the special costs application.

6 Telstra says that its application was successful in relation to one of the four items for which uplifting was sought and that it should be entitled to 25% of its costs. The premise of this submission is incorrect. As I

have explained, Telstra was only successful in relation to part of that item for which uplifting was sought. Further, the preparation of the defence was one of the smallest components of costs for which special costs orders were sought. Finally, a substantial part of the application involved submissions made to me concerning the admissibility of affidavit evidence adduced by Telstra which was plainly inadmissible.

7 Overall, although costs will generally follow the event and although Telstra did succeed in obtaining one part of the orders it sought, I consider that Telstra was almost completely unsuccessful in its application and, subject to the matter below, the appropriate course is for the Pourzands to recover their costs of the special costs application with a deduction to reflect Telstra's success in relation to item 3(b). That deduction should be 10%. Neither party suggested that the appropriate course would be for both parties to recover a reduced amount of their costs. Telstra expressly disclaimed this course which would make the costs assessment far more complex than it already will be.

8 The only possible qualification to this costs order is the order I made on 20 June 2012 that, in summary, Telstra's costs be taxed and paid on an indemnity basis from 29 March 2012. On its face, that order would permit Telstra to recover its costs of the special costs application. This is a further reason why, as I explained in my reasons in relation to the special costs application, the application for indemnity costs ought to have been brought at the same time as the application for special costs.

9 The second and third appropriate orders are therefore that:

2. The defendant pay 90% of the plaintiffs' costs of the application for special costs orders, to be taxed if not agreed.
3. There be no order as to the defendant's costs of the application for special costs orders.

10 For the avoidance of doubt, the purpose of the third order is to clarify that the costs of the special costs application fall outside the indemnity costs order which I made on 20 June 2012, prior to that application.

11 There is no need for further liberty to apply as sought by Telstra. No reason was suggested, and I can see none, for a need for a fourth application relating to costs in this matter.