

# Woolworths v Hidassy [2008] QDC 43— Does s 56 operate as a code for damages?

Paul Hidassy (“the plaintiff”) was injured at the Kawana Woolworths store on 25 May 2005, and served a Notice of Claim, pursuant to the *Personal Injuries Proceedings Act 2002* (“PIPA”) on 10 July 2005. .

### Woolworths v Hidassy [2008] QDC 43

#### Background Facts:

Paul Hidassy (“the plaintiff”) was injured at the Kawana Woolworths store on 25 May 2005, and served a Notice of Claim, pursuant to the *Personal Injuries Proceedings Act 2002* (“PIPA”) on 10 July 2005.

A compulsory conference, as prescribed under s 36 of the PIPA, occurred in October 2006, where Woolworths admitted liability. Mandatory Final Offers (“MFO”) were exchanged, whereby the Plaintiff offered to settle his claim for \$12,000.00 and Woolworths made an offer of settlement for \$1.00. The matter subsequently went to trial at the Maroochydore Magistrates Court and judgment was entered in favour of the Plaintiff for \$2,869.55 plus costs. Woolworths appealed on the basis that the Court was not entitled award costs to the Plaintiff by virtue of s 56 of PIPA. Costs were awarded because the Magistrate believed Woolworths had not reasonably attempted to resolve the claim and were in default of PIPA.

#### The Law:

Section 56(2) (a) reads:

“2) If the court awards \$3,000.00 or less in

*damages, the court must apply the following principles -*

(a) *if the amount awarded is less than the claimant’s mandatory final offer but more than the respondents’ mandatory final offer, no costs are to be awarded.”*

Woolworths argued that the above provision is mandatory and does not provide a Court with the discretion to award costs should the above situation arise.

An important factor to keep in mind is that the MFOs made by both parties in this case were made under section 39 of PIPA and not section 20 (this provision states that offers to settle must be made on a fair and reasonable basis). Judge Robinson noted that the Magistrate at first instance appeared to be persuaded by arguments that Woolworths had not made a fair and reasonable offer to settle (under section 20(1) (d) and so made the order for costs).

Counsel for the Plaintiff, unsuccessfully, argued that as a result of not making a “fair and reasonable” offer to settle under s 20, Woolworths had breached s 48(2) of PIPA (i.e. which allows for costs if a respondent does not comply with section 20) and the Magistrate was correct in awarding costs.

The appeal was allowed and Judge Robinson determined that section 56(1) operates as a code in relation to MFOs and the awarding of costs where damages are less than \$50,000.00. Accordingly, the Plaintiff was not entitled to costs because the Court's award was less than his MFO but more than the Defendant's MFO.

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