

Calderbanks – Are they an effective means of costs protection?

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Clarity / Pragmatism / Success



Body Corp 406198 v Argon Construction Ltd & Auk Council

(Bianco Apartments costs decision)

- Defendants liable in negligence.
- Plaintiffs sought costs and disbursements of \$1.4M.
- Defendants made a pre-trial Calderbank offer of \$19M.
- Issues:
 - (1) Who was the successful party?
 - (2) As a matter of discretion, how should the Court deal with the Calderbank offer?



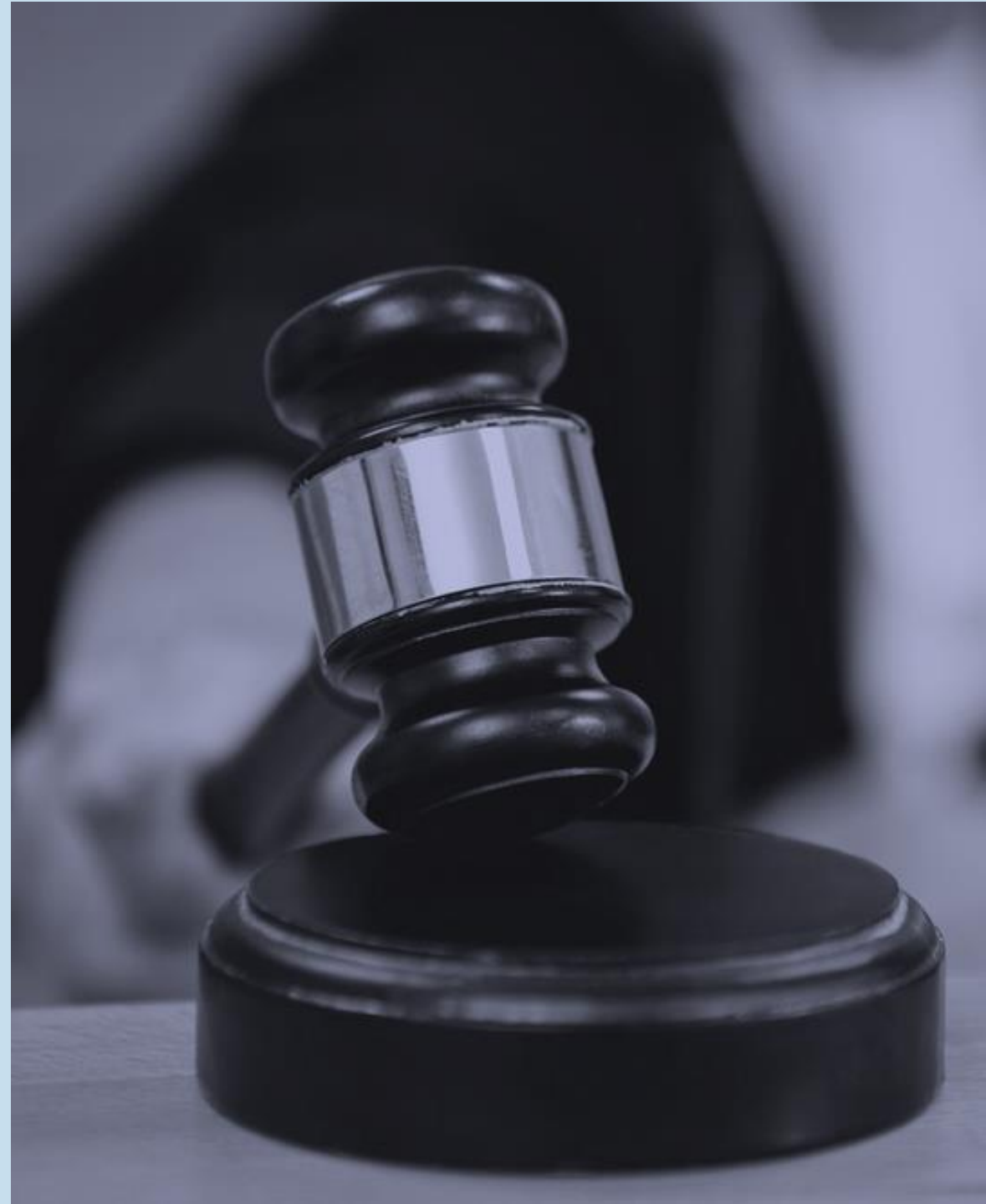
Who was the successful party?

- “*Limited success is still success for the purpose of costs*”.
- Irrelevant that the damages awarded fell substantially short of the amount sought.
- All that mattered was that a finding of liability had been made.



The Calderbank offer

- General principles:
 - “*A highly discretionary matter*”;
 - Reasonableness of rejection of offer.
- Defendants: Plaintiffs obtained judgment for just over 7% of what they sought.
- Held: Calderbank should not operate to reduce costs because “*the plaintiffs, at the time they rejected the offer, cannot be said have acted unreasonably*”.
- Awarded \$1.14M (65% Auk Council, 35% Argon).



Questions?



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