

HIGH COURT OF AUSTRALIA

GUMMOW, KIRBY AND HAYNE JJ

TERESA MARGARET DE SALES

APPELLANT

AND

ALBERT INGRILLI

RESPONDENT

De Sales v Ingrilli [No 2]
[2003] HCA 16
8 April 2003
P57/2001

ORDER

Motion dismissed.

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

De Sales v Ingrilli [No 2]

Practice and procedure – Costs – Appeal – Appeal allowed – Calderbank offer – Calderbank offer rejected by appellant – Where amount recovered by appellant exceeds amount offered by respondent.

Supreme Court Act 1935 (WA), s 32.

1 GUMMOW, KIRBY AND HAYNE JJ. On 14 November 2002, the Court delivered its reasons for judgment in this appeal¹. It ordered that the respondent pay the appellant's costs of the appeal.

2 The respondent now moves for an order recalling that order for costs and seeks, in its place, an order that the appellant pay the respondent's costs of the appeal. The respondent relies on a Calderbank offer² made by letter dated 8 March 2002. In that letter, the respondent offered to pay a further sum of \$62,800 (further, that is, to the sum for which judgment had already been entered) plus costs of the application for special leave to appeal to this Court and the consequent appeal. The appellant rejected the offer.

3 If the further amount of damages to be allowed to the appellant were to be calculated to the cent, it would amount to \$62,792.67. If it were to be rounded to the nearest thousand dollars³, or if interest were to be allowed under s 32 of the *Supreme Court Act 1935* (WA), the further amount recovered would exceed the sum of \$62,800 offered by the respondent.

4 Having regard to these considerations and the various other matters urged by the parties in their written submissions the respondent's motion should be dismissed. There should be no order as to the costs of the motion.

1 *De Sales v Ingrilli* (2002) 77 ALJR 99; 193 ALR 130.

2 *Calderbank v Calderbank* [1976] Fam 93.

3 (2002) 77 ALJR 99 at 115 [85]; 193 ALR 130 at 151.