

# SUPREME COURT OF QUEENSLAND

CITATION: *Ley v Woolworths Limited* (No 2) [2013] QSC 193

PARTIES: **Thomas Gerard Ley**  
**(Applicant)**  
**v**  
**Woolworths Limited ACN 000 014 675**  
**(Respondent)**

FILE NO: S629 of 2012

DIVISION: Application

PROCEEDING: Civil

ORIGINATING COURT: Supreme Court at Townsville

DELIVERED ON: 18 July 2013

DELIVERED AT: Townsville

HEARING DATE: Written Submissions

JUDGE: North J

ORDER: The respondent pay the applicant's costs of and incidental to the application to be assessed on the standard basis.

CATCHWORDS: COSTS – Power to Award – claim for damages for industrial accident – pre-litigation procedure – application to enforce obligations – whether restriction on costs applicable

LEGISLATION: *Workers' Compensation and Rehabilitation Act 2003*

CASES: *Brown v Marine Contracting Pty Ltd (ACN 010093651) & Ors (No 2)* [2012] QSC 345  
*Hall v Nominal Defendant* (1966) 117 CLR 423  
*ex parte Britt* [1987] 1 Qd R 221  
*Kidd v Toll North Ltd* [2012] QSC 220  
*Ley v Woolworths Limited* [2013] QSC 59.

COUNSEL: Mr A Philip SC for the Applicant/Plaintiff  
Mr G O'Driscoll for the Respondent/Defendant

SOLICITORS: Maurice Blackburn Lawyers for the Applicant/Plaintiff

## HopgoodGanim for the Respondent/Defendant

- [1] The issue is whether the plaintiff is deprived of and entitled to costs following a successful application for a declaration by reason of the *Workers' Compensation and Rehabilitation Act 2003* ("the Act").
- [2] On 14 March 2013 I made the declaration and published my reasons.<sup>1</sup> I ordered the parties make submissions in writing. I will not repeat what I said in those reasons concerning the facts or the history of the matter.
- [3] The application was brought before me before the applicant had commenced proceedings for damages in a court and concerned a dispute that arose in the course of the steps taken pre-proceedings mandated by the Act. The evidence before me, and the tenor of the submissions suggests that the issue of costs should be addressed, so far as the Act is concerned, on the basis that the applicant sustained a WRI<sup>2</sup> of less than 20%. Accordingly it was common ground between the parties that sections 315, 316 and 318C of the Act were relevant.<sup>3</sup>
- [4] The respondent's submission was that s 318C of the Act was engaged, that the applicant's application was interlocutory and that in the circumstance where there was no suggestion of unreasonable delay no order for costs could be made because of the combined effect of that section and s 316(1). I accept that the applicant's application was interlocutory, it did not finally determine the rights of the parties in so far as the applicant seeks damages.<sup>4</sup> Further I accept that there is no evidence of unreasonable delay.
- [5] However in my view s 316(1) only applies in circumstances of proceedings within a claimant's claim for damages before the court not to applications heard concerning disputes that might arise before proceedings for damages are commenced.<sup>5</sup>
- [6] In *Kidd v Toll North Pty Ltd*<sup>6</sup> Peter Lyons J said<sup>7</sup>:

"[6] In my view, s 318C is a further qualification on the power of the court to make an order for costs under Division 2 of Part 12 of Chapter 5. Effectively, therefore it is a qualification on the power of the court to make an order for costs, otherwise controlled by s 316 of the WCRA. Section 316 is concerned with an order for costs "in the claimant's proceeding"; and specifies in what circumstances an order for costs may be made in favour of the claimant, the insurer, or neither.

<sup>1</sup> *Ley v Woolworths Limited* [2013] QSC 59.

<sup>2</sup> "Work related impairment".

<sup>3</sup> The provisions as they appeared in the relevant reprint number 5 and subsequently.

<sup>4</sup> See for example the discussion of this issue by Peter Lyons J in *Brown v Marine Contracting Pty Ltd (ACN 010 093 651) & Ors* (No 2) [2012] QSC 345 at [12]; relying upon *Hall v Nominal Defendant* (1966) 117 CLR 423, 440; ex parte *Britt* [1987] 1 Qd R 221, 226-227.

<sup>5</sup> Consider further the judgment of Peter Lyons J in *Brown v Marine Contracting Pty Ltd (ACN 010 093 651) & Ors* (No 2) [2012] QSC 345

<sup>6</sup> [2012] QSC 220.

<sup>7</sup> *Kidd v Toll North Ltd* [2012] QSC 220 at [6].

Because s 318C is a qualification of the court's power to order costs in the claimant's proceedings, in my view, it applies only to an interlocutory application in such proceedings. There being no such proceedings on foot, the qualification does not apply."

- [7] In the circumstances I consider that I have the power to make an order for costs consistently with the jurisdiction of the court unaffected by the terms of the Act.<sup>8</sup> The applicant brought and successfully prosecuted an application for a declaration in circumstances where the respondent contested the applicant's entitlement. There are no circumstances warranting a departure from the usual rule that costs follow the event. Accordingly I will make an order that the respondent pay the applicant's costs of and incidental to the application to be assessed on the standard basis.

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<sup>8</sup> UCPR Rule 681.